JUDICIAL COUNCIL
OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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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

Date:	Thursday, August 23, 2018
Time:	12:10 p.m. to 2:00 p.m.
Location:	Conference Call
Public Call-In Number	1-877-820-7831/Listen Only Passcode: 8254930

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.

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

Call to Order and Roll Call

II. DISCUSSION AND POSSIBLE ACTION ITEMS (37 ITEMS)

JUDICIAL ADMINISTRATION

Item 01

Judicial Administration: Change to Advisory Committee Membership Requirements (amend rule 10.64) (Action required – recommend Judicial Council action)

Presenter: Lucy Fogarty

Item 02

Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009) (Action required – recommend Judicial Council action)

Presenter: Daniel Pone

INTERPRETERS

Item 29 Out of Order

Court Interpreters Advisory Panel (repeal and replace Rule of Court 2.891; adopt accompanying California Court Interpreter Credential Review Procedures) (Action required – recommend Judicial Council action)

Presenter: Rick Feldstein, Sonia Sierra Wolf and Claudia Ortega

PROTECTIVE ORDERS

Item 33 Out of Order

Protective Orders: Protecting Information of People Under 18 Years Old (Action required – recommend Judicial Council action)

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

APPELLATE

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 – recommend Judicial Council action)

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 – recommend Judicial Council action)

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 – recommend Judicial Council action)

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 – recommend Judicial Council action)

Presenter: Ingrid Leverett

CRIMINAL JURY INSTRUCTIONS (CALCRIM)

Item 07

Jury Instructions: Additions, Deletions, and Revisions to Criminal Jury Instructions (Action required – recommend Judicial Council action)

Presenter: Kara Portnow

CIVIL

Item 08

Civil Forms: Gender Discrimination Notice (adopt GDC-001) (Action required – recommend Judicial Council action)

Presenters: Susan McMullan

Item 09

Civil Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer (revise forms CIV-140 and CIV-141) (Action required – recommend Judicial Council action)

Presenters: Susan McMullan

Item 10

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 – recommend Judicial Council action)

Presenters: Susan McMullan

Item 11

Civil Forms: Confidential Information Form Under Civil Code § 1708.85 (revise form MC-125) (Action required – recommend Judicial Council action)

Presenters: Sarah Abbott

CRIMINAL

~~**Item 12 Deferred**~~

~~**Criminal Procedure: Multicounty Incarceration and Supervision (**amend rule 4.452) (Action required – recommend Judicial Council action)~~

~~Presenter: Eve Hershcopf~~

Item 13

Criminal Procedure: Petition for Writ of Habeas Corpus (revise form MC-275) (Action required – recommend Judicial Council action)

Presenter: Eve Hershcopf

Item 14

Criminal Justice Realignment: Petition and Order for Dismissal (revise forms CR-180 and CR-181) (Action required – recommend Judicial Council action)

Presenter: Eve Hershcopf

Item 15

Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings (amend rule 4.130) (Action required – recommend Judicial Council action)

Presenter Amy Kimpel

Item 16

Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2) (adopt rule 4.131) (Action required – recommend Judicial Council action)

Presenter: Amy Kimpel

Item 17

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 – recommend Judicial Council action)

Presenter: Eve Hershcopf

Item 18

Criminal Procedure: Petition to Seal Arrest and Related Records (approve forms CR-409, CR-409-INFO, and CR-410) (Action required – recommend Judicial Council action)

Presenter: Eve Hershcopf

FAMILY AND JUVENILE

Item 42 **Out of Order/Newly Added Item**

Family and Juvenile Law Advisory Committee (Appointment Request for Subcommittee members of VAWEP) (Action required – RUPRO action only)

Presenter: Tracy Kenny

Item 19

Family Law: Income and Expense Declaration (revise form FL-150) (Action required – recommend Judicial Council action)

Presenter: Gabrielle Selden

Item 20

Family Law: Transfer of Jurisdiction (adopt rule 5.97) (Action required – recommend Judicial Council action)

Presenter: Tracy Kenny

Item 21

Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f (adopt forms JV-742 and JV-743) (Action required – recommend Judicial Council action)

Presenter: Nicole Giacinti

Item 22

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 – recommend Judicial Council action)

Presenter: Nicole Giacinti

~~**Item 23**~~ **Deferred**

~~**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-217-INFO, JV-221, JV-282, JV-310, JV-326, JV-326-INFO, and JV-510, and approve new form JV-510(A)) (Action required – recommend Judicial Council action)~~

~~Presenter: Diana Glick~~

Item 24

Juvenile Law: School Notification of Delinquency Court Adjudication (amend form JV-690) (Action required – recommend Judicial Council action)

Presenter: Daniel Richardson

Item 25

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 – recommend Judicial Council action)

Presenter: Kerry Doyle

Item 26

Juvenile Law: **Intercounty Placements** (amend rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556) (Action required – recommend Judicial Council action)

Presenter: Kerry Doyle

~~**Item 27 Deferred**~~

~~**Juvenile Law: Guardianship Forms** (revise forms JV-330 and JV-350) (Action required – recommend Judicial Council action)~~

~~Presenter: Corby Sturges~~

Item 28

Juvenile Law: Information for Parents (revise forms JV-060 and renumber JV-060 INFO) (Action required – recommend Judicial Council action)

Presenter: Corby Sturges

PROBATE

Item 30

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 – recommend Judicial Council action)

Presenter: Corby Sturges

~~**Item 31 Deferred**~~

~~**Probate Guardianship: Response to Petition** (revise forms GC-211 and GC-212) (Action required – recommend Judicial Council action)~~

~~Presenter: Corby Sturges~~

~~**Item 32 Deferred**~~

~~**Probate Guardianship and Conservatorship: Qualifications and Training of Appointed Counsel** (amend rule 7.1101; revise forms GC-010 and GC-011) (Action required – recommend Judicial Council action)~~

~~Presenter: Corby Sturges~~

Item 33

Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, GC-366, GC-367, and GC-368 (Action required – recommend Judicial Council action)

Presenter: Corby Sturges

Item 34

Probate Guardianship and Conservatorship: Appointment of Counsel (approve forms GC-005 and GC-006) (Action required – recommend Judicial Council action)

Presenter: Corby Sturges

PROTECTIVE ORDERS

Item 35

Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS (amend rule 1.51 and 2.503; adopt form DV-630) (Action required – recommend Judicial Council action)

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

TECHNOLOGY

Item 37

Rules and Forms: Electronic Filing and Service (amend rules 2.250, 2.251, 2.255, and 2.257) (Action required – recommend Judicial Council action)

Presenter: Andrea Jaramillo

Item 38

Rules and Forms: Remote Access to Electronic Records (adopt rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503) (Action required – recommend Judicial Council action)

Presenter: Andrea Jaramillo

Item 39

Rules and Forms: Form for Withdrawal of Consent to Electronic Service (adopt form EFS-006) (Action required – recommend Judicial Council action)

Presenter: Andrea Jaramillo

PROP 66 WORKING GROUP

Item 40

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (amend rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

Presenter: Heather Anderson, Michael Giden, and Seung Lee

MISCELLANEOUS

Item 41

Rules and Forms: Technical Amendments (revise rule 5.552; amend Title 5, Division 3, Chapter 13, Article 2) (Action required – recommend Judicial Council action)

Presenter: Susan McMullan

III. ADJOURNMENT

Adjourn

Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Judicial Council: Change to Advisory Committee Membership Requirements (Amend California Rule of Court 10.64)

Committee or other entity submitting the proposal:
Trial Court Budget Advisory Committee (TCBAC)

Staff contact (name, phone and e-mail): Brandy Sanborn, (415) 865-7195, 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, and unanimously recommended by the TCBAC.
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.)
One submission received during Invitation to Comment in support of change with no additional comments (from San Diego CEO, Mike Roddy), and no additional comments by the TCBAC membership.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Judicial Council: Advisory Committee Membership Requirements

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.64

Recommended by
Trial Court Budget Advisory Committee
Hon. Jonathan B. Conklin, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 10, 2018

Contact
Brandy Sanborn, 415-865-7195
brandy.sanborn@jud.ca.gov

Executive Summary

The Trial Court Budget Advisory Committee recommends amending the rule that governs the committee to broaden its membership definition of "presiding judge" and to extend eligibility for reappointment to an existing presiding or past presiding judge member. In response to low numbers of nomination submissions from presiding judges, these changes would expand the pool of candidates who are knowledgeable and experienced in budget matters and avoid the loss of expertise. Finally, the committee recommends amending the rule to limit the Judicial Council's nonvoting members to those members who have direct oversight over Budget Services—the chief administrative officer and the director of Budget Services.

Recommendation

The Trial Court Budget Advisory Committee (TCBAC) recommends that the Judicial Council, effective January 1, 2019, amend rule 10.64 to:

1. Redefine "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;
2. Extend eligibility for reappointment to an existing presiding or past presiding judge member; and

3. 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 text of the amended rule is attached at page 4.

Relevant Previous Council Action

The Judicial Council adopted rule 10.64 effective February 20, 2014. The council amended the rule effective October 28, 2014, to:

- Allow an immediate past presiding judge to serve as a member;
- Provide that no more than two members of the committee may be from the same court;
- Reflect changes as a result of the retirement of the name "Administrative Office of the Courts";
- Replace "director of the fiscal services office" with "director of Finance"; and
- Delete a subdivision that would remove the director of Finance from serving as cochair.

Analysis/Rationale

This recommendation responds to identified concerns and helps advance Judicial Council goals and objectives, as explained below.

Broaden the membership definition of "presiding judge"

The recommended amendment would:

- Allow presiding judges who have served within six years of the year of their appointment as committee members 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.
- 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.
- Increase the pool from which to draw nomination submissions. This would be advantageous because the nominations process has lately resulted in low numbers of submissions from current and immediate past presiding judges.

Limit the Judicial Council's nonvoting members

The recommended amendment would limit the nonvoting members to Judicial Council leadership with direct oversight of Budget Services.

Policy implications

The membership eligibility change would likely increase the nomination pool each year.

Comments

This proposal circulated for comment from April 9 to June 8, 2018, as part of the spring 2018 invitation-to-comment cycle. One comment was received in support of the rule change with no additional comment. The TCBAC unanimously supported the rule amendment.

Alternatives considered

A rule amendment to broaden membership eligibility is recommended over an alternative such as educating new members on current budget issues and projects because of the time and resources an education session can require—especially significant during budget crises.

Fiscal and Operational Impacts

The proposal will not result in additional costs to the courts or operational impacts to Judicial Council staff.

Attachments and Links

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

Rule 10.64. Trial Court Budget Advisory Committee

(a)–(b) * * *

(c) Membership

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

(2)–(4) * * *

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

SPR18-01

Judicial Council: Change to Advisory Committee Membership Requirements (amend Cal. Rules of Court, rule 10.64)

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

	Commentator	Position	Comment	Committee Response
1.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	No specific comment.	The committee unanimously approved the proposed amendment; no additional comments were provided.

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

Item number: 0 2

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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 and Kyanna Williams, 415-865-7911 kyanna.williams@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 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 PAF's annual agenda on March 21, 2018. The committee's work on this project is covered under the project titled, "Permanent Medical Excuse from Jury Service", which is item 3 under the New or One-Time Projects section

If requesting July 1 or out of cycle, explain:

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Jury Service: Permanent Medical Excuse

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 2.1009

Recommended by
Advisory Committee on Providing Access and Fairness
Hon. Kathleen E. O'Leary, Cochair
Hon. Laurie D. Zelon, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 13, 2018

Contact
Daniel Pone, 916-323-3121
daniel.pone@jud.ca.gov
Kyanna Williams, 415-865-7911
kyanna.williams@jud.ca.gov

Executive Summary

The Advisory Committee on Providing Access and Fairness recommends adoption of rule 2.1009 of the California Rules of Court 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.

Recommendation

The Advisory Committee on Providing Access and Fairness recommends that the Judicial Council, effective January 1, 2019, adopt rule 2.1009 of the California Rules of Court: Permanent medical excuse from jury service.

The proposed rule is attached at pages 10–12.

Relevant Previous Council Action

There is no previous council action relevant to this report.

Analysis/Rationale

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).)

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 Jerry Hill (D-San Mateo) 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: 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.[1]

Rule 2.1009

The committee 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.

Purpose

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 implications

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 their 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 health care provider. (Subd. (c)(1).) 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. (Subd. (c)(1).)

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[1] The members of the workgroup are: Ms. Margaret Johnson, Advocacy Director, Disability Rights California; Judge Ginger E. Garrett, Superior Court of San Luis Obispo County; Judge Lia R. Martin, Superior Court of Los Angeles County; Associate Justice William J. Murray, Jr., Court of Appeal, Third Appellate District; Mr. Bruce A. Soublet, Senior Assistant City Attorney/ADA Coordinator, City of Richmond; Mr. Sean G. Metroka, Court Executive Officer, Superior Court of Nevada County; Ms. Melissa Fowler-Bradley, Court Executive Officer, Superior Court of Shasta County; and Presiding Judge Janet Gaard, Superior Court of Yolo County.

The rule would require the applicant to submit the request and supporting letter, memo, or note to the court's jury commissioner on or before the date the person is required to appear for jury service. (Subd. (c)(2).) In the event of an incomplete application, the rule would allow the jury commissioner to require the applicant to furnish additional information in support of the request for permanent medical excuse. (Subd. (c)(3).)

Definitions

The rule defines "applicant" as "a 'person with a disability' or their authorized representative." (Subd. (a)(1).) "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." (Subd. (a)(2).) "Person with a disability" is defined as "an individual 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 a person who has a physical or mental medical condition that limits one or more of the major life activities, has a record of such a condition, or is regarded as having such a condition." (Subd. (a)(6).)

The rule defines "permanent medical excuse" as "a release from jury service granted by the jury commissioner 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).) "Health care provider" is defined to mean "a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, therapist, physician's assistant, Christian Science practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with relevant state or federal laws and regulations." (Subd. (a)(4).)

Response to request

The new rule would require the jury commissioner to promptly inform the applicant in writing of its determination to grant or deny the request. (Subd. (d)(1).) If the jury commissioner grants the request, they would be required to remove the person from the rolls of potential jurors as soon as it is practicable to do so. (Subd. (d)(2).) If the permanent medical excuse request is denied, the jury commissioner would be required to provide the applicant a written response with the reason for the denial. (Subd. (d)(3).) The rule further specifies that the jury commissioner may deny the request only when the jury commissioner determines that the applicant has failed to satisfy the requirements of the rule. (Subd. (e).)

Right to reapply

The rule would allow a person whose request is denied to reapply at any time following receipt of the jury commissioner's denial. (Subd. (f).)

Right to seek reinstatement

The 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's jury commissioner. (Subd. (g).)

Confidentiality requirements

The new rule would require the jury commissioner 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*.)

Comments

This proposal was circulated for comments from April 9, 2018, through June 8, 2018. Six comments were received from: the Orange County Bar Association; four courts (the Superior Courts of Los Angeles, Placer, San Diego, and Ventura Counties); and one individual. Two of the courts—San Diego and Ventura—and the individual commentator supported the proposal as written. The Placer court supported the proposal with two suggested changes: expanding the definition of health care provider, and placing the authority for handling requests for permanent medical excuse with the jury commissioner. The Orange County Bar Association also supported the proposal with several suggested modifications, including the Placer court's two suggestions above, which the advisory committee accepted.

The Los Angeles court and the Orange County Bar Association both made suggestions to add more specifications for the health care providers' documentation in order to substantiate the need for a permanent medical excuse or demonstrate that the applicant's inability to perform jury service is "substantially supported." As discussed below, the advisory committee elected not to make these changes.

A chart with the full text of the comments and the committee's responses is attached beginning at page 13.

The principal comments are discussed here.

Proposals to expand definition of health care provider. The Placer court noted that the most common type of permanent disability notification provided by jurors to its jury commissioner's office is from the U.S. Department of Veterans Affairs (VA), and that the initial definition of health care provider as circulated for comment did not appear to cover certain VA documents that may be provided in support of a person's request for permanent medical excuse. Similarly,

the Orange County Bar Association suggested amending the definition of health care provider to reference medical professionals authorized to practice their profession by relevant state or federal laws and regulations to cover a broader group of military and veterans providers. The advisory committee agreed with these concerns and expanded the definition of health care provider in subdivision (a)(4), to read as follows:

> (4) "Health care provider" means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, therapist, physician's assistant, Christian Science Practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with relevant state or federal laws and regulations.

Proposals to clarify responsibility of jury commissioner. The Placer court and the Orange County Bar Association both expressed concerns with the initial version of the proposal that referenced the court (versus the court's jury commissioner) as the entity that would receive and decide requests for permanent medical excuse, including requests for reconsideration and reinstatement. Both commentators correctly noted that the court's jury commissioner is the responsible entity under existing statutes and rules governing jury service, and that the use of "court" instead of "jury commissioner" in the proposal made it unclear whether the intent of the rule was to require some type of judicial review of the request. The advisory committee did not intend for judicial officer review of, or involvement with processing, requests for permanent medical excuse. The committee agrees that the court's jury commissioner or their designee should perform this function, and the references in the rule to the court were replaced with the jury commissioner.

Proposals to add greater specificity and substantiation requirements. The Orange County Bar Association recommended "add[ing] more specification as to what is required for substantiation from health care provider letters, notes, and records in order to protect against fraud[.]" Similarly, the Los Angeles court made several suggestions to add new language to the rule "to avoid confusion about the applicable standard the court will apply[.]" In particular, the Los Angeles court recommended adding new policy and standard language that would require a request for permanent medical excuse to be "substantially supported by a qualified health care provider[,]" and that the provider's written submission "should not be conclusory, but rather must contain sufficient information demonstrating that the conclusion is well supported."

The advisory committee carefully considered these comments and decided not to recommend making these changes. The committee strongly believes that jury commissioners do not have the necessary expertise and should not be put in the position of evaluating the legitimacy of a prospective juror's underlying medical situation, which can include highly sensitive and very personal information regarding the individual's physical or mental condition. The committee notes that its position is consistent with what it understands to be existing practice among the bulk of the courts that currently provide for a permanent medical excuse from jury service. For

example, the Ventura court noted in its comments that "[w]e currently ask the medical provider to simply state the juror is permanently excused from jury duty due to their medical condition (without reference to a specific condition)." The committee also notes that this position is consistent with how applicants over the age of 70 are treated when seeking an undue hardship excuse from jury service (i.e., no further verification or documentation is required for those individuals under rule 2.1008).

Proposals to adopt implementing forms. The invitation to comment specifically asked whether the Judicial Council should create any optional or mandatory forms to assist in the implementation of the proposed rule. The Ventura court's response stated that "[a]dditional forms are not necessary, but could be helpful to reduce transmission of confidential HIPAA information." The Los Angeles court recommended that forms be created for optional use that could include a request/application form, a health care provider certification form, a notice of incomplete request, and a determination on request for permanent excuse. The Orange County Bar Association recommended that the council create optional or mandatory forms to assist the various courts in implementation of the rule to ensure uniformity and consistency.

The advisory committee discussed these comments and ultimately decided not to recommend the adoption of optional or mandatory forms at the present time. Some of the workgroup members initially expressed support for the creation of optional or mandatory forms to assist prospective jurors, health care providers, and the courts in implementation of the new rule. However, the workgroup members were mindful of the fact that the courts that currently provide for a permanent medical excuse from jury service appear to be doing so without the need for any additional forms. As noted above, the Ventura court (which self-identified as "a medium-sized court") acknowledges that additional forms are not necessary. The Ventura court also noted that "[t]he proposal should be easily implemented by courts of all sizes" and that "no implementation changes [would be] necessary" as "[o]ur current process follows the guidelines."

In addition, the committee was concerned about the potential for adverse financial impacts or other undue burdens on applicants that could result from requiring treating health care providers to use specific forms in support of an applicant's request for permanent medical excuse. Some health care providers reportedly charge their patients for filling out special forms (up to $75 dollars per form according to one of the committee members), which can cause a financial hardship on prospective jurors of limited means. Another committee member noted that one of the state's large HMO providers reportedly utilizes a multilevel process that its patients must navigate when attempting to secure special forms that are not included in that HMO's own proprietary case management system.

Moreover, some of the workgroup members expressed concerns that the easy availability of forms could have the unintended consequence of facilitating abuse by individuals improperly seeking to avoid jury service. Committee members also noted that the proposed rule would not preclude individual courts from adopting their own implementing forms should they choose to do so. On balance, the committee decided the most prudent course would be to hold off on

recommending the creation of any optional or mandatory forms at the present time, but it is open to reconsidering this issue at a later date if experience with the rule demonstrates the utility of doing so.

Other comments. Other comments received by the committee include the following:

- The Orange County Bar Association suggested adding language to the definition of "capable of performing jury service" as meaning "a person not disqualified under CCP §203 who…" The committee did not agree with this proposed change, which seemed to be unnecessary and superfluous, since a person already disqualified from jury service would not appear to have a reason to seek such an excuse.

- The Orange County Bar Association also suggested amending the definition of "permanent medical excuse" to reference "a release under CCP §204 and CCP §218 from jury service by the county jury commissioner" and at the end add "as documented herein by a health care provider." The advisory committee does not recommend making these suggested changes. The committee believes the addition of references to Code of Civil Procedure sections 204 and 218 is not helpful and may result in unnecessary confusion. The committee also disagrees with the suggestion to add any further supporting documentation requirements, as explained above.

- The Superior Court of Los Angeles County recommended some technical, clarifying changes to the definitions of "applicant" and "person with a disability." The committee agreed and made the requested modifications to those items.

- The Los Angeles court also suggested modifying the definition of "capable of performing jury service" to mean "a person can pay attention to and/or mentally process evidence, testimony…" The committee disagrees with this suggestion and believes the proposed additional language would add unnecessary confusion.

- The Los Angeles court suggested modifying the definition of health care provider by adding at the end "mental health professional and any other medical professional competent to evaluate the disability and the potential juror's capacity to perform jury service." The committee considered this suggestion and believes the proposed additional language is unnecessary. The committee notes that the current definition of a person with a disability already includes people with both physical and mental disabilities, and the definition of health care provider includes psychologists and other medical professionals who are competent to evaluate persons with mental as well as physical conditions.

- The Los Angeles court also suggested adding to the right-to-reapply provision a requirement that the applicant must "present[ ] information showing that the circumstances have changed, or new information has been obtained, since the last application." The committee considered this suggestion but recommends not making this

change. The committee is mindful of the fact that people with disabilities have conditions that may change rapidly and over time. In light of this fact, the committee does not support imposing additional hurdles on an applicant's ability to reapply.

Alternatives considered

The 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.

Fiscal 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.

Attachments and Links

1. Cal. Rules of Court, rule 2.1009, at pages 10–12.
2. Chart of comments, at pages 13–27.

Rule 2.1009 of the California Rules of Court is 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 their 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, therapist, physician's assistant, Christian Science Practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with state or federal law and regulations.

(5) "Permanent medical excuse" means a release from jury service granted by the jury commissioner 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) "Person with a disability" means an individual 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 a person who has a physical or mental medical condition that limits one or more of the major life activities, has a record of such a condition, or is 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 persons with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors. No eligible jurors 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 their 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 jury commissioner 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 jury commissioner on or before the date the person is required to appear for jury service.

(3) In the case of an incomplete application, the jury commissioner may require the applicant to furnish additional information in support of the request for permanent medical excuse.

(4) The jury commissioner 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 jury commissioner must respond to a request for a permanent medical excuse from jury service as follows:

(1) The jury commissioner 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 jury commissioner 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 jury commissioner must provide the applicant a written response with the reason for the denial.

(e) Denial of request

Only when the jury commissioner determines the applicant failed to satisfy the requirements of this rule may the jury commissioner 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 jury commissioner'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 jury commissioner that the permanent medical excuse be withdrawn.

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Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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	Commenter	Position	Comment	Committee Response
1.	Kristie Karkanen	A	I am writing in support of rule 2.1009. I believe it is fair and provides for disabled people with health conditions that might impair their ability to reasonably perform jury service a reasonable way to "opt-out". I believe that jury duty offers citizens an opportunity to perform acts of service for the community. I have personally attended jury service at all opportunities when I was able (though I had not yet been selected as a juror). I enjoyed performing jury service and I would not ordinarily seek to avoid this civic duty, unless health conditions prevented me from performing it. This rule would protect and aid those members of the community whose health is not good. I request that this rule be implemented.	The committee appreciates the commenter's support. No further response is required.
2.	Superior Court of Placer County by Jake Chatters, Court Executive Officer	AM	The Placer Superior court appreciates the opportunity to comment on the proposed California Rules of Court 2.1009 addressing Permanent Medical Excuse from Jury Service. The court supports the proposed rule, if amended.	The committee agrees with the recommendation to expand the definition of "Health Care Provider" to include other medical providers or organizations that provide services to military veterans. The revised definition will read as follows: **Rule 2.1009. Permanent medical excuse from jury service**

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	Commenter	Position	Comment	Committee Response
			The most common type of permanent disability notification provided by jurors to our Jury Commissioner's Office is from the Department of Veterans Affairs (VA). As the rule is written, it is unclear if VA documents stating disability will be sufficient to excuse jurors from service as it is not from a specific medical professional. Obtaining a letter from a VA doctor can be a burdensome process for potential jurors who may already have other documentation to support their request. To address this, we recommend that the rule be amended, or an advisory committee comment be included, to allow a juror to submit records of their VA disability entitlement benefits in support of their request. Secondly, the rule references the "court" as the approving entity. It is unclear whether the intent of the rule is to require judicial review of the request. This function can be most efficiently handled through the Jury Commissioner's Office, under the authority granted in Code of Civil Procedure, Section 204 and 218. As such, we recommend that the rule reference the "Jury Commissioner" instead of "the court" for clarity.	**(a) Definitions** As used in this rule: (1) – (3) *** (4) "Health care provider" means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, **therapist,** ~~**or**~~ physician's assistant**, Christian Science Practitioner, or any other medical provider, facility, or organization that is** authorized ~~**to practice by the state**~~ and performing within the scope of the practice **of their profession** ~~**as defined by**~~ **in accordance with relevant** state **or federal** law**s and regulations**~~**, or a Christian Science practitioner**~~. The committee does not intend for judicial review of the request and agrees with the suggestion that this function should be handled by the court's jury commissioner or their designee. The committee also agrees with the suggestion to replace the references to "the court" with "jury commissioner" throughout the rule.

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	Commenter	Position	Comment	Committee Response
3.	Superior Court of Ventura County by Nan Richardson, Court Program Manager	A	Ventura Superior Court currently follows a similar process to excuse jurors with a permanent medical disability. **Does the proposal appropriately address the stated purpose?** Yes. **Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?** Additional forms are not necessary, but could be helpful to reduce transmission of confidential HIPAA information. We currently ask the medical provider to simply state the juror is permanently excused from jury duty due to their medical condition (without reference to a specific condition). **Would the proposal provide cost savings?** No. We already follow a similar process for jurors with disabilities that would qualify under this new guideline.	No response required. The committee appreciates the commenter's overall support for the proposal. The committee believes that additional forms are not currently necessary. However, the committee may elect to reconsider this issue at a later date based on the experiences of court users and jury commissioners with implementation of the rule. No response required.

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	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts? For Ventura Superior Court, no implementation changes necessary. Our current process follows the guidelines. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes **How well would this proposal work in courts of different sizes?** The proposal should be easily implemented by courts of all sizes. We are a medium-sized court.	No response required. No response required. The committee appreciates the commenter's support for the overall workability of the proposed rule.
4.	Orange County Bar Association by Nikki P. Milliband, President	AM	In response to the Requests for Specific Comments, the OCBA agrees that (1) the proposal appropriately addresses the stated purpose if modified, and (2) the Judicial Council should create optional or mandatory forms to assist the various courts in	As discussed above, the committee does not believe that optional or mandatory Judicial Council forms are necessary at the present time for implementation purposes.

	Commenter	Position	Comment	Committee Response
			implementation of the Rule to ensure uniformity and consistency. The general recommendations of the OCBA are as follows: (a) add more specification as to what is required for substantiation from health care provider letters, notes, and records in order to protect against fraud;	The committee discussed this suggestion but does not recommend adding more specifications to, or substantiation requirements for, the supporting documentation by health care providers. The committee believes that jury commissioners neither have the necessary expertise nor should they be put in the position of evaluating the legitimacy of an applicant's underlying medical condition. The committee notes that its position is consistent with what it understands to be existing practice among the courts that currently provide for a permanent medical excuse from jury service. The committee also notes that its position is consistent with how applicants over the age of 70 are treated when seeking an undue hardship excuse from jury service (i.e., no further verification or documentation is required for those individuals under rule 2.1008).
			(b) provide more examples or guidance as to what constitutes a "permanent medical excuse" so as to educate the applicants, health care providers, and jury commissioners;	The committee discussed this suggestion but does not recommend adding examples or providing further guidance at the present time to what constitutes a "permanent medical excuse." The committee believes that the proposed rule, when taken as a whole, provides sufficient guidance to applicants, health care providers, and jury commissioners on the process and handling of a request for a permanent medical excuse from jury service.

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Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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	Commenter	Position	Comment	Committee Response
			(c) add language to the definition of "capable of performing jury service" as meaning "a person not disqualified under CCP §203 who…"	The committee does not agree with the proposed additional language, which it believed to be unnecessary and superfluous.
			(d) add a definition and citation references for "the court" to mean only the "jury commissioner" or change the language to only reference "the jury commissioner" (rather than "the court") since by statute only the jury commissioner is authorized under CCP §218 and Rule 2.1008 to hear and grant excuses;	As noted above, the committee agrees with this suggestion and the rule has been amended to replace the references to "the court" with "the jury commissioner" where appropriate.
			(e) amend the definition of "health care provider" to reference medical professionals "authorized to practice their profession by relevant state or federal laws and regulations" since military and veterans' providers and other out-of-state providers should be so empowered;	As noted above, the committee agrees with this suggestion and the definition of health care provider has been amended to include other medical providers or organizations that provide services to military veterans.
			(f) the OCBA is unsure and takes no position regarding whether "chiropractors, nurse practitioners, nurse mid-wives, physician's assistants,	No response is required.

	Commenter	Position	Comment	Committee Response
			or Christian Science practitioners" should be included in the definition of "health care provider" and recommends further comments; (g) amend the definition of "permanent medical excuse" to reference "a release under CCP §204 and CCP §218 from jury service by the county jury commissioner" and at the end add "as documented herein by a health care provider"; (h) amend the "policy" to require that applicants or their authorized representatives may "seek a permanent medical excuse from jury service based on medical information substantiated by a qualified health care provider." (i) throughout the proposed rule substitute the term "jury commissioner" in place of "the court" in order to comply with CCP §208 and Rule 2.1008 so as to ensure that judicial hearings and fact determinations are not the unintended consequences.	The committee does not recommend making these suggested changes. The committee believes the proposed addition of references to sections 204 and 218 of the Code of Civil Procedure is not helpful and would result in unnecessary confusion. The committee also disagrees with the suggestion to add any further documentation requirements for the reasons discussed above. The committee considered this suggestion but does not recommend making this change. As discussed in more detail above, the committee does not feel it would be appropriate at this time to impose on health care providers any further documentation or substantiation requirements beyond what is contained in the proposed rule. As noted above, the committee agrees with this suggestion and has incorporated these changes.

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	Commenter	Position	Comment	Committee Response
5.	Superior Court of San Diego by Mike Roddy, Executive Officer	A	*The commentator indicates agreement.	No response required.
6.	Superior Court of Los Angeles County (no name provided)	AM	**Suggested Modifications:** **Rule 2.1009 (a)** (1) Add quotes to **"**person with a disability**"** to denote a defined phrase. (3) Add text: "Capable of performing jury service" means a person can pay attention to **and/or mentally process** evidence, testimony…" (4) Add text: "…as defined by state law, or a Christian Science practitioner, **mental health professional and any other medical professional competent to evaluate the disability and the potential juror's capacity to perform jury service.** (6) Change to singular to match the reference in the "Applicant" definition to read: "**Person** with a **disability**" means **an individual** 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 **a**	The committee agrees with this suggested change. The committee disagrees with this suggestion and believes the proposed additional language would add unnecessary confusion. The committee considered this suggestion and believes the proposed additional language is unnecessary. The committee notes that the current definition of a person with a disability already includes individuals with both physical and mental disabilities and the definition of health care provider includes psychologists and other medical professionals who are competent to evaluate persons with mental as well as physical conditions. The committee agrees with this suggestion and will incorporate these changes.

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	Commenter	Position	Comment	Committee Response
			person who **has** a physical or mental medical condition that limits one or more of the major life activities, **has** a record of such a condition, or **is** regarded as having such a condition." **(b) - Add new subsection (3):** **(3) It is also the policy of the court to permanently excuse a person with a disability who, as a result of that disability, is permanently incapable of performing jury service, with or without accommodation, as substantially supported by a qualified health care provider.** **Add new section (c)** Insert new section (c) to avoid confusion about the applicable standard the court will apply. Renumber the following sections. **(c) Standard for Permanent Medical Excuse** **A person with a disability shall be granted a permanent medical excuse when he or she meets the following standard:** **He or she is a person with a disability who, as a result of that disability, is permanently**	The committee considered the suggestion to add this new provision to the policy portion of the rule but does not recommend making this change for the basic reasons stated above. The committee does not feel it would be appropriate to impose any additional documentation requirements on health care providers in light of the inability of jury commissioners to properly evaluate the highly sensitive, personal and confidential nature of an applicant's underlying medical information. The committee does not agree with adding this proposed new standard for the above reasons.

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	Commenter	Position	Comment	Committee Response
			incapable of performing jury service, with or without accommodation, as substantially supported by a qualified health care provider.	
			Renumbered section (d) Process for requesting permanent medical excuse This is suggested to avoid conclusory notes that effectively preclude any meaningful evaluation of the application.	The committee does not agree with this suggestion for the reasons stated above.
			(1) Add "confidential" to first line: (1) "An applicant must submit to the court a **confidential** written request for permanent…"	The committee does not agree with the suggestion to add "confidential" to the applicant's written request as it is unnecessary given the courts' overall confidentiality obligation under the rule (see subdivision (c)(4).)
			Add new sentence to the end: "…signed by the provider. **The letter, memo, or note should not be conclusory, but rather must contain sufficient information demonstrating that the conclusion is well supported.**"	The committee does not agree with this suggestion for the reasons stated above.
			(2) Since many counties use an on-call system, we suggest a change in wording to "scheduled to serve."	The committee discussed this suggestion and considered a variety of possible clarifying changes to subdivision (c)(2). After considerable deliberation, the committee agreed that appearance should be the triggering event in order to give applicants as much

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	Commenter	Position	Comment	Committee Response
				time as possible to submit their applications. Accordingly, the committee decided to make the following clarifying change to subdivision (c)(2): "(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 **required** to appear for jury service."
			Also suggest adding a requirement to include the state license number of the health care provider. "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 **scheduled to serve** jury service. **Documentation should include the state license number of the health care provider.**"	The committee considered this suggestion but does not recommend making this change. Not all health providers include their license number on their letterhead, and the committee believes that imposing this new requirement would result in unnecessary delays in processing applications.
			Renumber section (d) to (e) Response to request	The committee disagrees with making this renumbering change, which is not necessary in light of its decision above regarding the proposed new standard language.
			Delete former section (e) This section is unnecessary with the addition of a standard for granting the application. ~~(e) Denial of request~~ ~~Only if the court determines the applicant failed to satisfy the requirements of this rule may the~~	The committee disagrees with this suggestion in light of its decision above not to include the proposed new standard language.

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	Commenter	Position	Comment	Committee Response
			~~court deny the permanent medical excuse request.~~ **(f) Right to reapply** Add language - absent this addition, the "right to reapply" appears to be an unlimited right to seek reconsideration of the ruling. "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 **(d) and by presenting information showing that the circumstances have changed, or new information has been obtained, since the last application.** **Does the proposal appropriately address the stated purpose?** Yes, however, a couple of changes could make it more effective. Please see suggested modifications above. **Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?** We recommend that forms be created for optional use and could include the following:	The committee considered this suggestion but recommends not making this change. The committee is mindful of the fact that people with disabilities have conditions that may change rapidly and over time. In light of this fact, the committee did not support imposing additional hurdles on an applicant's ability to reapply. See responses above to proposed modifications. As noted above, the committee does not believe that optional or mandatory forms are needed at the present time for successful implementation of the

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	Commenter	Position	Comment	Committee Response
			• Request/application form • Health care provider certification form stating the requirements to be permanently excused so the health care provider can certify that he/she understands the requirements. • Notice of incomplete request • Determination on request for permanent excuse **Would the proposal provide cost savings? If so please quantify.** Depending on the volume of requests received, some limited staff savings could be achieved if the review of requests is limited to ensuring that applications are complete and that the requirements of the rule are satisfied. **What would the implementation requirements be for courts?** The Los Angeles Superior Court currently has a permanent excuse program so minimal training would be required as to the new requirements and process. Three full time Office Assistant staff, two for back- up purposes, a supervisor and manager would need to be trained. Our Jury Management Information System is already programmed to process permanent excuses, including removing jurors permanently excused from the rolls of potential jurors. Minimal	proposed rule. However, the committee is prepared to revisit this issue at a later date if experience with the rule demonstrates the utility of doing so. No response required. No response required.

SP18-40

Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

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

	Commenter	Position	Comment	Committee Response
			programming would be required and could be done by court technology staff. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Three months would be sufficient lead time for implementation.	No response required.

Item number:03

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23-24, 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.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Appellate Procedure: Finality of Appellate Division Decisions

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 2, 2018

Contact
Sarah Abbott, 415-865-7687
sarah.abbott@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending several California Rules of Court relating to the finality of appellate division decisions. The amendments would require court clerks to send appellate division decisions to the parties on the same day they are filed and tether the date of finality of appellate division decisions to the date they are sent, rather than the date they are filed.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2019, approve the following amendments:

- Amend California Rules of Court, rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2), and 8.1005(b)(1) so that the date of finality for appellate division decisions is triggered by the date on which the court clerk *sends* the decision to the parties, as opposed to the date on which the decision is *filed*; and

- Amend rules 8.887(b), 8.935(a)(1), and 8.976(a)(1) to require court clerks to send appellate division decisions to the parties, electronically when permissible, on the same day they are filed.

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.

The text of the amended rules is attached at pages 6–9.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, California Rules of Court, rules 8.800 through 8.936, were repealed and replaced in full effective January 1, 2009. Rule 8.887 was amended in 2011, 2014, and 2018, but the amendments are not relevant to this proposal. Rule 8.888 was amended in 2016 but the amendment is not relevant to this proposal. Rule 8.935 was amended in 2014 to make it parallel to rule 8.887 with respect to the filing of decisions. Rule 8.976 was adopted effective January 1, 2016 and has not been subsequently amended. Rule 8.1005 was adopted as rule 63 effective January 1, 2003, renumbered and amended effective January 1, 2007, and amended effective January 1, 2010 and January 1, 2011, but the amendments are not relevant to this proposal.

Analysis/Rationale

In the appellate division, an application for certification to transfer to the Court of Appeal and a petition for rehearing are due 15 days after the decision is filed.[1] However, the parties generally do not receive immediate electronic notification when an appellate division decision is filed; instead, filed decisions are generally sent by mail. This proposal responds to feedback that, under the current rules, there often is insufficient time to prepare and file applications for certification for transfer and petitions for rehearing before 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 rules requiring the court clerk to "promptly" file and send all opinions and orders, there are often delays in mailing those decisions.

To remedy this timing issue, the committee recommends amending rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2), and 8.1005(b)(1) so that the date of finality for appellate division decisions is triggered by the date on which the court clerk sends the decision to the parties, as opposed to the date on which the decision is filed.

[1] See Cal. Rules of Court, rules 8.1005(b) and 8.889(b)(1).

The committee also recommends amending rules 8.887(b), 8.935(a)(1), and 8.976(a) to require court clerks to send appellate division decisions to the parties on the same day they are filed, and to send the decisions electronically when permissible under rule 2.251. These rules currently require the appellate division clerk to "promptly file all opinions and orders of the court and promptly send copies showing the filing date ...."[2] However, it appears that at least in some courts there is a delay between the filing date and the date a decision is sent. The proposed amendments are intended to ensure that litigants are not prejudiced due to appellate division decisions not being sent by the clerk in a timely manner.

Policy implications

The committee did not identify any significant policy implications relating to the proposed amendments. While adoption of the proposal would make the rules for finality of appellate division decisions different from the rules governing finality in the Courts of Appeal, the committee believes that this difference is appropriate given the relevant operational differences between the appellate division and the Courts of Appeal, such as the lack of immediate electronic notification of decisions in many appellate divisions.

Comments

The proposed amendments were circulated for public comment between April 9 and June 8, 2018, as part of the regular spring comment cycle. Three organizations and two courts submitted comments on this proposal. Of the five commentators, four agreed with the proposal, and one agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 9–11.

Three commenters (Github Inc., the Orange County Bar Association, and the Superior Court of San Diego County) agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, noted that the proposal "addresses a genuine problem and is a sensible attempt to give parties sufficient time to prepare their pleadings seeking review of adverse decisions in the Appellate Division."

The only substantive comments were provided by the Superior Court of Los Angeles County. The invitation to comment specifically asked whether, 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, the other amendments tethering the date of finality to the date of sending are still beneficial. The Superior Court of Los Angeles County answered this question in the affirmative. The committee chose to raise this question because it was not clear if amending the rules in both ways (i.e., a "belt and suspenders" approach) was necessary. Based on the comments received, the committee believes that all of the proposed amendments would be beneficial and should be adopted.

[2] See Cal. Rules of Court, rules 8.887(b), 8.935(b), and 8.876(b).

The invitation to comment also asked whether rules 8.887, 8.888, 8.935, and 8.976 should be further amended to require the trial court clerk to *serve* all opinions and orders, in order to clarify the date an opinion or order is *sent*. The Superior Court of Los Angeles County responded that "the proposed rule should clarify how to determine the date that a document is sent" but did not propose a specific modification to the proposal. When the Appellate Advisory Committee discussed this issue initially, the committee decided not to add a specific "proof of service" requirement to the proposed amendments to the rules because doing so would be inconsistent with other similar rules and might create confusion for clerks and/or litigants. Moreover, because the proposal would require clerks to send decisions on the same day they are filed, the filing date would necessarily be the sending date, which in turn would be the trigger date for finality. Therefore, after considering the Superior Court of Los Angeles County's comment, the committee does not believe that further amendment of the rules is necessary to clarify the date on which a decision is sent, as that date should be the same as the filing date.

Alternatives considered

The committee 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 both applications for certification for transfer and petitions for rehearing before the time that the appellate division loses jurisdiction.

The committee further considered whether the amendments tethering the date of finality to the date on which the court clerk sends the decision to the parties are needed if the amendments requiring court clerks to send appellate division decisions to the parties on the same day they are filed are approved. As discussed above, the committee specifically asked for public comment on this question and ultimately determined that all of the proposed amendments would be beneficial.

The committee also considered whether further amendment of rules 8.887, 8.888, 8.935, and 8.976 would be advisable to specifically require the court clerk to *serve* all appellate division opinions and orders on the date they are filed. As discussed above, the committee specifically asked for public comment on this question. Based on the comments received and after further discussion of the issue, the committee determined that no further amendment of the rules is necessary.

Finally, the committee initially 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 date that such decisions are posted on the court's website, to 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. This alternative was not part of the proposal included in the invitation to comment.

Fiscal and Operational Impacts

No fiscal impacts are expected, though some training of court staff will likely be required.

Attachments and Links

1. Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005, at pages 6–9
2. Chart of comments, at pages 10–12

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

Rule 8.887. Decisions

(a) * * *

(b) Filing the decision

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

(c) * * *

Rule 8.888. Finality and modification of decision

(a) Finality of decision

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

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

(3) * * *

(b) Modification of judgment

(1) * * *

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

(c) * * *

Rule 8.889. Rehearing

(a) * * *

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after the following, whichever is later:

(A) The decision is ~~filed~~ sent by the court clerk to the parties;

(B) A publication order restarting the finality period under rule 8.888(a)(2), if the party has not already filed a petition for rehearing, is sent by the court clerk to the parties;

(C) A modification order changing the appellate judgment under rule 8.888(b) is sent by the court clerk to the parties; or

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

(2)–(4) * * *

(c)–(d) * * *

Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur

(a) Filing of decision

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

(2) * * *

(b) Finality of decision

(1) * * *

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

(3) * * *

(c)–(e) * * *

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

(a) Filing of decision

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

(b) Finality of decision

(1) * * *

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

(3) * * *

(c)–(d) * * *

Rule 8.1005. Certification for transfer by the appellate division

(a) * * *

(b) Application for certification

(1) A party may serve and file an application asking the appellate division to certify a case for transfer at any time after the record on appeal is filed in the appellate division but no later than 15 days after:

(A) The decision is ~~filed~~ sent by the court clerk to the parties;

(B) A publication order restarting the finality period under rule 8.888(a)(2) is sent by the court clerk to the parties;

(C) A modification order changing the appellate judgment under rule 8.888(b) is sent by the court clerk to the parties; or

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

(2)–(5) * * *

**(c)–(e) * * *

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

#	Commenter	Position	Comment	Committee Response
1	California Lawyers Association, Committee on Appellate Courts of the Litigation Section	A	The Committee on Appellate Courts supports this proposal. The proposal addresses a genuine problem and is a sensible attempt to give parties sufficient time to prepare their pleadings seeking review of adverse decisions in the Appellate Division.	The committee notes the commenter's support for the proposal; no response required.
2	Github, Inc., By Isabelle E. Jarrott Gamerco, New Mexico	A	Welcome	The committee notes the commenter's support for the proposal; no response required.
3	Orange County Bar Association By Nikki P. Miliband President	A		The committee notes the commenter's support for the proposal; no response required.
4	Superior Court of Los Angeles County	AM	Suggested Modification: The proposed rule should clarify how to determine the date that a document is sent. Request for Specific Comments: **Does the proposal appropriately address the stated purpose?** Yes. **If the amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a) are implemented and court clerks are**	The committee notes the commenter's support for the proposal if modified. The committee appreciates this suggestion. However, because the proposal will amend the rules so that decisions are sent on the same day they are filed, the date that a document is sent will be the same as the filing date. Therefore, the committee does not believe that further amendment of the rules is necessary. No response required.

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

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

#	Commenter	Position	Comment	Committee Response
			required to send opinions on the same day they are filed, are the other amendments still beneficial? Yes.	No response required.
			To clarify the date an opinion or order is sent, should rules, 8.887, 8.888, 8.935, and 8.975 require the trial court clerk to serve all opinion and orders? Yes and the proposed rule should clarify how to determine the date that a document is sent.	The committee appreciates this suggestion, but for the reasons stated above the committee believes that no further amendment of the rules is necessary.
			What would the implementation requirement be for courts? For example, training staff (please identify position and expected hour of training), revising processes and procedures (please describe), changing case management systems. No additional training needed.	The committee appreciates this input.
			Is it feasible for court clerks to send appellate division opinions on the same day they are filed, electronically when permissible. Yes.	The committee appreciates this input.
			What are the impediments to court clerks providing parties with	

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

#	Commenter	Position	Comment	Committee Response
			immediate electronic notice of appellate division opinions as is done in the court of Appeal? This court has not yet implemented electronic court filing for our Appellate department. **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?** Yes. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **How well would this proposal work in court of different sizes?** It should work the same in all courts.	The committee appreciates this input. The committee appreciates this input. The committee appreciates this input. The committee appreciates this input.
5	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A		The committee notes the commenter's support for the proposal; no response required.

Item number:04

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23-24, 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 and 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 (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

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Appellate Procedure: Settled Statements in Unlimited Civil Cases

Rules, Forms, Standards, or Statutes Affected
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

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 20, 2018

Contact
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Executive Summary

To facilitate use of the settled statement procedure in unlimited civil cases, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend adopting new forms and revising 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.

Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Approve *Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)* (form APP-014A) to streamline the settled statement form by moving certain testimony and evidence to an attachment;
2. Approve *Information Sheet for Proposed Settled Statement* (form APP-014-INFO) to provide instructions for completing the settled statement form and information about the settled statement process;
3. Approve *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020) to assist respondents with responding to and proposing any changes to appellants' proposed settled statements;
4. Approve *Order on Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-022) to allow the trial court judge to order certification of the statement, the preparation of a reporter's transcript, or modifications or corrections to the appellant's proposed settled statement;
5. Approve *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) to assist appellants who wish to use a settled statement but are not automatically entitled to do so and must seek a court order;
6. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to be more understandable and easier to complete;
7. Revise *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to conform to content changes in form APP-003;
8. Revoke and replace *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001), relabeled as form APP-001-INFO, to update and expand the existing form; and
9. Revoke *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) and replace with *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to reformat, reorganize, and simplify the form.

The new and revised forms are attached at pages 11–53.

Relevant Previous Council Action

Effective January 1, 2018, the Judicial Council amended California Rules of Court, rule 8.137—the rule regarding settled statements in appeals to the Court of Appeal in unlimited civil cases—to make the settled statement procedure less burdensome for appellants and the courts. Those amendments permit an appellant to use the settled statement procedure without filing a motion in certain circumstances, eliminate the option of using a settled statement as the record of the documents from the trial court proceeding, and add provisions specifying the contents of settled statements and the procedure for the trial court's review. The amendments also allow the respondent to pay for a reporter's transcript in cases in which a court reporter recorded the proceedings but the appellant elects or moves to use a settled statement.

As part of the same proposal, the Judicial Council approved new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help appellants prepare their proposed statements, and

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

Analysis/Rationale

Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court oral proceedings for an appeal. A settled statement is a summary of the oral proceedings prepared by the appellant and reviewed and approved by the trial court judge who presided over the proceedings. Because court reporters are no longer present to record the proceedings in many civil cases, reporter's transcripts are unavailable in many civil appeals, and more appellants are now trying to use the settled statement procedure in these cases.

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 waiver. The council also approved new, optional *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help 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.

Recommended changes

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend new and revised forms to help parties, particularly those who are self-represented, better understand the settled statement procedure, how to seek a court order to use a settled statement, how to complete the proposed settled statement form, and how to navigate the appeals process generally. The new and revised forms are also intended to reduce the burdens on trial court judges who must review and certify the settled statements.

New information sheet on appeal procedures. Proposed new *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) updates and expands 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:

- Reformatting to be more user-friendly and easy to follow;
- Relabeling 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 describing prejudicial error and the appellant's burden on appeal;
- 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.

New proposed settled statement form. The committees are proposing major changes to existing *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.

New attachment for witness testimony and evidence. *Other Party and Nonparty Witness Testimony and Other 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.

New information sheet on proposed settled statements. *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.

New form for responding to an appellant's proposed settled statement. *Response to Appellant's Proposed Settled Statement* (form APP-020) may be used by the respondent to indicate agreement with appellant's proposed statement or to request amendments.

New order form. *Order on Appellant's Proposed Settled Statement* (form APP-022) will facilitate the process for trial court judges to order certification of the appellant's proposed settled statement, the preparation of a reporter's transcript, or corrections or modifications to the statement. It includes 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.

New motion form. *Appellant's Motion to Use a Settled Statement* (form APP-025) will help 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.

Revisions to the appellant's record designation form. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) is revised to be more understandable and easier to complete as suggested in comments submitted 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).

Revisions to the respondent's record designation form. *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) contains minor revisions to conform to content changes in form APP-003.

Policy implications

The committees have identified no policy implications.

Comments

This proposal was circulated for public comment from April 9 to June 8, 2018, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Four commenters agreed with the proposal. Seven organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, agreed if the proposal is modified. A chart with the full text of all comments received and the committee's responses is attached at pages 54–80.

Generally, the discussion of comments below is organized in the same manner as the comment chart, beginning with general comments about the proposal, followed by comments regarding a specific form arranged numerically by form number. The discussion does not include all comments suggesting points of clarification or minor edits.

General comments
As noted above, all 11 commenters support the proposal, and several included positive general comments.

One superior court expressed concern, however, about whether the forms would work in family law matters and recommended developing a separate set of forms tailored to these proceedings. The committees considered this issue when the proposal was being developed. A number of modifications were made to the forms, including adding "other parent/party" to the captions, referencing appealable orders in addition to judgments, including examples from family law matters, and revising form APP-014, *Appellant's Proposed Settled Statement (Unlimited Civil Case)*, so that party and witness testimony is not limited to trial proceedings. Several more such modifications were suggested in the comments and added to the forms by the committees. Based on the Family and Juvenile Law Advisory Committee's conclusion that the forms will work well for family law matters, the committees concluded that no action on this comment is required.

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee commented on the impacts of this proposal on court operations: training of staff on the forms and an increase in court staff workload, particularly self-help staff. JRS indicated that self-help staff typically do not assist litigants with appellate procedures, but they "would likely have to develop long-term services and use existing resources to help self-represented litigants with appellate processes, particularly in family law cases."

The committees acknowledge that courts will incur some costs in implementing the new and revised forms, including training costs and potential impacts to self-help staff when more self-represented litigants undertake the settled statement process. However, the potential increased workload for court staff may be more a result of the increasing number of litigants who cannot afford a court reporter than a result of this proposal. The committees expect that the new and revised forms will ultimately save resources by making the settled statement process easier for parties to understand and utilize and less burdensome for the courts.

Comments on form APP-001-INFO
A state lawyers' association noted that the form includes a statement regarding the presumption on appeal that a judgment or order is correct but does not include information regarding when that presumption does not apply. The commenter suggested adding a note of caution to the appellant to carefully consider the form of the oral record because it may affect the appeal, and that the appellant may wish to consult with an attorney. The committees agreed with adding this note but declined any invitation to describe in the form the exceptions to the presumption, the effects of implied findings, and ways to avoid implied findings. Any such discussion would involve technical points of law and exceed the scope of an information sheet that provides an overview of the appeals process.

The lawyers' association also suggested modifying the form to add language allowing self-represented victims of domestic violence and others with privacy concerns to keep their contact information private. The committees agreed and made the modification.

This commenter also suggested clarifying that oral argument is not the same as a hearing or a trial in that no new evidence can be considered. The committees added language to this effect as well as references to rule 8.256 and an online self-help page for more information about oral argument.

A county bar association raised issues with the item on this form that described an appeal as distinguished from trial court proceedings and included discussions of "prejudicial error" and "no substantial evidence." The commenter opined that this item presented a confusing explanation of the requirements to prevail on appeal, did not adequately explain appellate concepts, and seemed to combine the need to prove prejudicial error with the substantial evidence standard of review. The committees reorganized this item, separating the description of an appeal from a new item (item 5) entitled "What does the appellant need to prove to win on appeal?" The new item describes prejudicial error, includes a brief discussion of insufficiency of the evidence as one possible prejudicial error, and emphasizes that the burden of proof lies with the appellant.

Comments on form APP-003

With respect to the item on the form where appellants can check a box to indicate that they wish to proceed with a settled statement as the record of the oral proceedings (item 2b(3)(c)), two commenters suggest adding language that appellants must file new form APP-025, *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)*. The committees agreed with adding a reference to form APP-025 to the check box for appellants who must obtain an order allowing them to use a settled statement. The language reflects the fact that form APP-025 is for optional use.

A bar association submitted several suggestions regarding the designation of exhibits (item 4c). First, the commenter suggested that the form be revised to reflect the practice of courts routinely returning exhibits to the parties following a hearing or trial. The committees agreed and added language describing the procedure for obtaining such exhibits. Second, the bar association suggested including a check box for a party to indicate the intent to file an exhibit directly with the appellate court, citing rule 8.244(b)(2) of the California Rules of Court. The committees declined to make this change because this is the form appellants file to designate the record, and the cited rule applies to a request for exhibits later in the appellate proceedings. Third, the bar association suggested revising the field for describing exhibits to account for exhibits that are lodged and not numbered. The committees decided not to make this change because the item already includes lodged exhibits and any further revisions tailored to lodged exhibits would likely cause confusion and make the form more complex.

Comments on form APP-014

Two child support organizations requested that the requirement that an appellant describe how he or she was harmed by the complained-of error on appeal be restored to this form. The commenters explained that it helps alert self-represented litigants that an error alone is not grounds for an appeal; rather, there must be an error that caused harm. The committees considered this matter in developing the proposal and concluded that appellants should not be required to describe the harm in a settled statement because it calls for a legal analysis that is not required by the rule. It also could result in forfeiture of arguments on appeal if the description is inartfully drafted. The committees reaffirmed their earlier conclusion and, in responding to these comments, noted that item 5 on form APP-001-INFO includes a section describing prejudicial error.

A bar association questioned the requirement that an appellant fill in the date the notice of appeal was filed, because having that date would necessarily mean that the notice of appeal was already filed at the time the appellant was drafting his or her settled statement. The commenter opined that the process of preparing a settled statement would help the self-represented litigant decide whether to appeal a trial court decision. Moreover, having a settled statement would also help an unrepresented litigant find counsel for the appeal. The commenter recognized that rule 8.137 contemplates that the notice of appeal is already on file at the time a notice designating the record (including choosing to proceed with a settled statement) is filed. The commenter suggested that form APP-014 not include "a mandatory reference to the date of filing a notice of appeal." The commenter further suggested that the committees consider these issues in connection with a broader review of rule 8.137.

The committees declined to make the suggested change to the form, and a review of rule 8.137, including any proposed amendments, is beyond the scope of this proposal. A settled statement is a record of the oral proceedings that are relevant to the reasons for an appeal. Preparing a settled statement requires time and effort on the part of the respondent/prevailing party and the trial court, in addition to the appellant/aggrieved party. Until a notice of appeal is filed and there is a matter pending, it does not seem feasible to expect a potential respondent or the trial court to devote resources to the settled statement process. The committees do not believe that a settled statement would function well as an aid to a litigant who is deciding whether to appeal or seeking the assistance of counsel on appeal.

The commenter also raised concerns that the new format of this form does not help an appellant focus on the factual and legal issues giving rise to the appeal, and that it could encourage "rambling, argumentative, narrative responses." The commenter suggested it would be better to start with a description of the order or judgment being appealed from and the specific ruling that is being appealed. The form should then ask directed and specific questions about the basis for the appeal and ask the appellant to describe any relevant motions, findings, documents, testimony, instructions, etc.

Rather than making changes to form APP-014, the committees added a new item (item 7) to the information sheet, form APP-014-INFO, entitled "Overview for completing form APP-014." The

new item provides guidance to the appellant on how to approach filling out the form and provides summaries of portions of the record that are relevant to the appeal.

Comments on form APP-014A

Two child support organizations point out that, if there is testimony from more parties or nonparty witnesses than will fit on one form APP-014A, the appellant will need to attach more than one such form. However, there is no way to indicate how many additional forms are attached. This, the commenters suggest, could lead to confusion because "there is no way to distinguish one form APP-014A from another form APP-014A." The commenters suggest requiring the appellant to state how many of these forms are attached.

The committees concluded that such a requirement could be confusing and likely would not improve the form. Form APP-014A is an optional form; the appellant is free to use it or draft another document to provide the additional testimony. Thus, any requirement to state the number of forms APP-014A would apply only to appellants who use this form exclusively. Likewise, requiring the appellant to state how many pages were attached to form APP-014A, rather than the number of those forms, would require the appellant to count the pages attached to an attachment. The potential fixes may be more problematic than the issue they are intended to address. The committees will revisit the issue in the future if they receive feedback that this is a problem and a numbering system is necessary.

Comments on form APP-022

A state lawyers' association suggested a modification for this form in light of issues an appellant might have based on the presumption that an order or judgment is correct and the doctrine of implied findings to support that order or judgment. The commenter is concerned that many litigants may not have meaningful access to an appeal because a statement of decision was not prepared in their case and suggested adding a check box for the court to state, "This settled statement contains the court's decision and the court's factual and legal basis for its decision."

The committees declined to make this change. Adding a check box to allow the court to order that the settled statement is also the court's statement of decision would be a substantive change that is beyond the scope of this proposal. Moreover, a statement of decision and a settled statement involve different procedures and serve two different functions. Nothing seems to preclude the court from including the order proposed by the commenter in item 2f of the form ("Other orders are specified below:"). However, adding a check box to indicate that "this settled statement contains the court's decision and the court's factual and legal basis for its decision" would seem to suggest that this is the norm or the preferred practice. In addition, notice to the respondent and an opportunity to have input are implicated if the settled statement is declared by the court to also constitute its statement of decision.

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 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 the format 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.

Fiscal 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. In addition, as discussed above under general comments, the committees received a comment that this proposal could significantly impact the workload of court self-help staff. However, the committees expect that the new and revised forms will save resources by making the settled statement process easier for parties to understand and access and less burdensome for the courts.

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 11–53
2. Chart of comments, at pages 54–80

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 3. 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 gives you a general idea of the appeal process. To learn more:

- 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*.
- 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/courtsofappeal.htm*.
- Visit the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-appeals.*htm.
- Review the counties included in each appellate district at *www.courts.ca.gov/documents/appdistmap.pdf.*

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 the superior 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.

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.

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*.

3 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).

4 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. Note: Injunctions include restraining orders.
- Appoint a receiver.
- Are made after final judgment in the case.

- Are made appealable by the Family Code or the Probate Code.

You should consult with a lawyer or a court self-help center to determine if your order is final and appealable. Go to *www.courts.ca.gov/selfhelp-selfhelpcenters.htm* to find information about the self-help center in your county.

(You can view Code of Civil Procedure section 904.1 using the link below: http://leginfo.legislature.ca.gov/faces/codes.xhtml.)

5 What does the appellant need to prove to win on appeal?

The appellant must prove that an error in the trial court proceedings was made and that the error affected the outcome of the court's or jury's decision. An error that affected the outcome of the case is called a "prejudicial error."

An error can include things like errors made by the judge about the law, errors or misconduct by the lawyers or by the jury, incorrect instructions given to the jury, or insufficient evidence to support the judgment, order, or other decision being appealed. Note: This is not a complete list of all possible errors.

When the appellant argues that the error was based on insufficient evidence to support the judgment or other decision being appealed, the Court of Appeal will determine whether there was "substantial evidence" to support the judgment, order, or other decision being appealed. But in conducting 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 the trial court's conclusions about which side had more or stronger evidence or whether witnesses were believable. It only determines whether the evidence is sufficient to support the judgment, order, or other decision.

The Court of Appeal will generally not overturn the judgment, order, or other decision being appealed unless the record shows a prejudicial error was made. The winning party does not have to prove that the judgment, order, or other decision was correct. Instead, it is up to the appellant to prove that the error was made and that the error affected the outcome of the case.

6 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.

However, if you need to keep your contact information private (for instance, in an appeal involving a domestic violence restraining order), you may give a different mailing address instead. But if you use a different address, be sure to check it regularly to stay informed about your case and about your obligations regarding your case.

You must keep the Court of Appeal, the trial court (if the trial court proceedings continue or are expected to continue), and the other parties in your case informed of any change in your contact information for service of notices and other documents relating to the appeal.

For your trial court case, you may complete *Notice of Change of Address or Other Contact Information* (form MC-040), file it in the trial court, and have it served on the parties in the case.

For your case in the Court of Appeal, you may refer to form MC-040 as an example of the information that you need to include in a notice regarding the change in your contact information. That notice must be filed in the Court of Appeal and served on the parties in the appellate case.

7 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* 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.

8 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.htm*.

9 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*.

10 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 days** after the trial court clerk or a party serves either (1) a document called a "Notice of Entry" of the trial court judgment or appealable order or (2) a file-stamped copy of the judgment or appealable order.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 days after entry of judgment or appealable order (generally, the date the judgment or appeable order 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 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.

11 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* (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*. 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.

12 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, deliver property to another party, or comply with child custody or visitation orders (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov* /faces/codes.xhtml). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request or some other procedure authorizes a stay (such as filing a bond in appropriate cases).

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.

13 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*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—-so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (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*.

14 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.courts.ca.gov/forms.htm.* 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 (16) 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. 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 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 either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

b. Record of what was said in the trial court (the "oral proceedings")

Important! **The type of record of the oral proceedings that you choose, including a reporter's transcript or a settled statement, should be carefully considered, as it may affect your appeal. You should consult with a lawyer to determine the best option in your case.**

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*.

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 for 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. But a court reporter might not have been present unless you or another party in your case had 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 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*.

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 either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

(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*.

(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*.)

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*.

Respondent's review: The respondent has 20 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 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.

15 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.

16 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*.

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*.

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 (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.

17 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."

18 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.

19 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief 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.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

20 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.

21 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.

22 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*.

23 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 3 of this information sheet, if you are considering filing a cross-appeal.

24 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.

25 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 14 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 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*. 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*.

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 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 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*.

26 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*.

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*.

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 days to reply to your brief.

27 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.

28 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief 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.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

29 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.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		**DRAFT**
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	**7-18-2018**
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		**Not approved by the Judicial Council**
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
OTHER PARENT/PARTY:		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on *(date):*		COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I 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 at the hearing or trial) 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.

Form Approved for Optional Use
Judicial Council of California
APP-003 [Rev. January 1, 2019]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ WITH the following record of the oral proceedings in the superior court *(you must check (1), (2), or (3) below)*:

(1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section (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 asking 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. You may use form APP-025 to prepare the motion.)*

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):*

Title of Administrative Proceeding	Date or Dates

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

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

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal *(this document)*	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment *(if any)*	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket *(if any)*	

CASE NAME:	SUPERIOR COURT CASE NUMBER:

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

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

☐ I request that the clerk include 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)		

☐ 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 (12).)*

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. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			

☐ 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 (5).)*

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:

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)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ 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)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ 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 NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **07-31-2018** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*		COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

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

The appellant has 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)		
(4)		
(5)		
(6)		
(7)		

☐ 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 (8).)*

Form Approved for Optional Use
Judicial Council of California
APP-010 [Rev. January 1, 2019]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

1. 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. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		

☐ 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 (5).)*

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.)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. a. (1) *(continued)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						☐ Yes ☐ No
(b)						☐ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No
(e)						☐ Yes ☐ No
(f)						☐ Yes ☐ No
(g)						☐ Yes ☐ No

☐ See additional pages. *(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).)*

(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)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		**DRAFT**
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	**01-04-2018**
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		**Not approved by the Judicial Council**
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF/PETITIONER:		SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:		
OTHER PARENT/PARTY:		
APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)		COURT OF APPEAL CASE NUMBER *(if known)*:
Re: Appeal filed on *(date):*		

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

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

Form Approved for Optional Use
Judicial Council of California
APP-014 [New January 1, 2019]

Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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

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

(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 *(if known)*:

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 *(if known)*:

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 *(if known)*:

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)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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) 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.)*

Form Approved for Optional Use
Judicial Council of California
APP-014A [New January 1, 2019]

Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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 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.)*

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.)*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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

APP-014-INFO Information Sheet for Proposed Settled Statement

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 14b(3) and 25d.

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.*
- Find out about self-help resources for the district in which you filed your appeal, at 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*.
- Consult with a lawyer. Find a lawyer through your local bar association, the State Bar of California at *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 11);
- 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).

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.

7 Overview for completing form APP-014

- Review the entire form to become familiar with the categories and what areas apply to the reasons for your appeal. Not all items will apply to your situation.
- Review the judgment or order that you are appealing and make a copy to attach to form APP-014.
- Know why you are appealing the trial court's order or judgment. Describe the reasons in item 2 of form APP-014.

In addition, you will use form APP-014 and any attachments to specify those portions of the record that have evidence relevant to your issues on appeal, such as:

- The testimony of a party or nonparty witness.
- The court's ruling on an objection to a party's or non-party witness's testimony.
- The court's rulings about allowing (or not allowing) exhibits to be admitted into evidence to support or disprove a party's or a nonparty witness's testimony.
- The trial court's findings at the hearing or trial.
- The court's ruling on a motion or motions.
- The court's rulings on one or several jury instructions (Note: Not all cases have juries.)

Remember, not every item on the form may apply to your situation. Answering yes or no where indicated on form APP-014 will help you and the court focus on the issues that are relevant to your appeal.

8 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 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.

9 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.

(10) 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.

(11) 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 (8) of this information sheet for the definition of substantial evidence.)

Errors. 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:	
X	Present your case all over again to the Court of Appeal;
X	Present new evidence or new witnesses to the Court of Appeal;
X	Generally complain about the judge or a lawyer; or
X	Explain to the Court of Appeal that a witness did not tell the truth at the trial.

(12) 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.

13 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.

14 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 8 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."

15 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.

16 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.

17 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.

18 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*.

19 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.

20 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.

21 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.

22 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.

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***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
RESPONSE TO APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE) ☐ _____ Amended *(If applicable, specify 1st, 2nd, 3rd, etc. amended form.)*	COURT OF APPEAL CASE NUMBER *(if known)*:

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 for Unlimited Civil Cases* (form APP-001-INFO) and *Information Sheet for Proposed Settled Statement* (form APP-014-INFO).

***Important!* Do not use this form if you elect to provide a reporter's transcript instead of proceeding with a settled statement.**

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 *(if known)*:

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 *(if known)*:

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):*

☐ Attachment 5

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

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***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
ORDER ON APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE) ☐ _____ Amended *(If applicable, specify 1st, 2nd, 3rd, etc. amended form.)*	COURT OF APPEAL CASE NUMBER *(if known)*:

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 item 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)

Form Approved for Optional Use
Judicial Council of California
APP-022 [New January 1, 2019]

ORDER ON APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)

Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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 or modified proposed settled statement must be served and filed by *(date):*

f. ☐ Other orders are specified below:

Date:

(TYPE OR PRINT NAME)

SIGNATURE OF TRIAL COURT JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
APPELLANT'S MOTION TO USE A SETTLED STATEMENT (UNLIMITED CIVIL CASE) 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 ☐ Repondent ☐ Other parent/party ☐ Other *(specify):*

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

   a. Date: Time: ☐ Dept.: ☐ Room:

   b. Address of court ☐ same as noted above ☐ 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.						☐ Yes ☐ No
b.						☐ Yes ☐ No
c.						☐ Yes ☐ No
d.						☐ Yes ☐ 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.)*

Form Approved for Optional Use
Judicial Council of California
APP-025 [New January 1, 2019]

APPELLANT'S MOTION TO USE A SETTLED STATEMENT
(UNLIMITED CIVIL CASE)

Code Civ. Proc. § 1005
Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: COURT OF APPEAL CASE NUMBER *(if known)*:

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)

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	AM	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the forms with potential impacts to the Department and its stakeholders is set forth below. … Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes. *[See comments on specific provisions below.]*	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments.
2.	California Lawyers Association, Family Law Section, Executive Committee	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes.	The committees note the commenter's support for the proposal.
3.	California Lawyers Association, Litigation Section, Committee on Appellate Courts	AM	The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association supports this proposal but suggests some modifications, as noted below in response to the Invitation to Comment's request for specific comments. Yes, the new and revised forms make the complex settled statement process more understandable for litigants, especially self-represented litigants. In particular, we believe that domestic violence survivors, a population	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments. No response required.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			that is overwhelmingly self-represented in family court, will be able to navigate the settled statement forms, given the new layout, questions, and structure of the documents. However, there is a concern that these forms may mislead self-represented litigants into thinking that the alternatives to a reporter's transcript may lead to greater success in their appeal. Thus, as suggested below, we encourage the Judicial Council to make two changes to avoid this potential problem. … • **Would the forms work well in all types of unlimited civil cases?** APP-014, APP-020, APP-014A, and APP-022 will work in family law cases, including domestic violence restraining order cases. *[See comments on specific provisions below.]*	See below for responses to specific comments. No response required.
4.	California Judges Association by Lexi Howard, Legislative Director	A	CJA supports the proposed new and revised forms and thinks will make the settled statement process less burdensome for court participants, especially considering, as indicated in the Invitation to Comment, "(1) the complexity and difficulty of the settled statement process for litigants and the 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	The committees note the commenter's support for the proposal and appreciate this feedback.

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			only way to create a record of the oral proceedings." By providing detailed guidance to litigants and courts, the new and revised forms appear to fulfill these goals. The invitation to comment includes the following proposed forms: 1. Information on Appeal Procedures for Unlimited Civil Cases (APP-001-INFO) (the settled statement discussion is on pages 13-15) 2. Appellant's Notice Designating Record on Appeal (APP-003) 3. Respondent's Notice Designating the Record on Appeal (APP-010) 4. Appellant's Proposed Settled Statement (APP-014) 5. Information Sheet for Proposed Settled Statement (APP-014-INFO) 6. Response to Appellant's Proposed Settled Statement (APP-020) 7. Order on Appellant's Proposed Settled Statement (APP-022) 8. Appellant's Motion to Use A Settled Statement (APP-025) Creating a settled statement is not an ideal way of preparing the record of the oral proceedings. Even with the assistance of the new and revised forms, settled statements are burdensome, time-consuming, and vulnerable to error. The need for a settled statement often signals a litigant's lack of representation, sophistication, or funds –	No response required. No response required.

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			otherwise, the litigant would have arranged for a court reporter to record the proceedings. Many self-represented litigants will likely have difficulty completing the new and revised forms because, as the forms become more comprehensive and provide more guidance, they necessarily become more complicated. Given the complexity of rule 8.137 and the lack of other options such as court-provided court reporters or electronic recording of court proceedings, however, the new and revised forms for preparing settled statements can only improve the process for the courts and litigants.	No response required.
5.	Child Support Directors Association of California, Judicial Council Forms Committee, by Ronald Ladage, Chair	AM	The Child Support Directors Association's Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee's feedback is set forth below. … Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes. *[See comments on specific provisions below.]*	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments.
6.	Family Violence Appellate Project by Shuray Ghorishi, Senior Attorney	A	Family Violence Appellate Project ("FVAP") greatly appreciates the opportunity to comment on the above-listed rules. FVAP was founded in 2012 to ensure the safety and well-being of domestic abuse survivors and their children by helping them obtain effective appellate	The committees note the commenter's support for the proposal.

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			representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic abuse survivors and their children. Since its inception, FVAP has screened over 1,000 requests for assistance, has represented appellants and respondents in 42 appeals and writs, and has filed amicus curiae briefs in 12 cases that raised significant issues of statewide concern for domestic abuse survivors. Our work has, to date, resulted in 31 published appellate decisions interpreting the Domestic Violence Prevention Act and other California Family Code sections designed to protect survivors of domestic abuse and their children. FVAP supports the letter submitted by the Committee on Appellate Courts of the California Lawyers Association, Litigation Section.	See below for responses to specific comments submitted by the Committee on Appellate Courts of the California Lawyers Association, Litigation Section.
7.	Orange County Bar Association by Nikki P. Miliband, President	A	*[No specific comments submitted.]*	The committees note the commenter's support for the proposal.
8.	San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to comment on the Appellate Advisory Committee's proposed new and changed forms. As your Committee may know, the APS has long supported measures that provide greater access to justice for unrepresented litigants. Through participation in the San Diego Appellate Self-Help Workshop--a	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
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			program that uses volunteer appellate practitioners to educate *pro se* litigants on appellate rules and procedures-our members witness firsthand that efforts to demystify the appellate process yield positive results for the unrepresented parties, the courts, and practitioners. From our experience, we offer the following with the hope that it will assist the Committee in achieving its stated purpose of helping parties-in particular self-represented litigants better understand the settled statement procedure. … In conclusion, the APS commends the Appellate Advisory Committee for their dedication to the goal of simplifying the settled statement process. We appreciate the opportunity to comment and hope that the thoughts we provide will further assist the Committee in its work. *[See comments on specific provisions below.]*	No response required. No response required.
9.	Superior Court of California, County of Los Angeles	AM	**Suggested Modifications:** **Remove all references to family law.** The forms included in SPR18-04 should be used for unlimited civil and NOT for family law. Family law has unique statutory requirement for	The committees note the commenter's support for the proposal if modified. The committees do not recommend the changes suggested by the commenter. The committees believe that the new and revised forms serve the needs of all unlimited civil law litigants, including family law litigants. However, as part of ongoing work to improve the settled statement

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			findings. There are no juries in a family law case so the references to juries are extraneous. These forms are not adequately tailored to meet the needs of the family law discipline. No action should be taken to implement for family until the Judicial Council refines the forms and tailors them for family law. **Request for Specific Comments:** **Does the proposal appropriately address the stated purpose?** For unlimited civil, yes, very clear for litigant and easier for staff. No for family law. **Would the forms work well in all types of unlimited civil cases?** Yes, but not for family law. **Does moving nonparty testimony and evidence to an attachment improve the form APP-014?** Yes, it would be helpful. **Would the proposal provide cost savings? If so, please quantify?** In the long run it may save time, but we do not see any cost savings. **What would the implementation requirements be for courts? For example, training staff (please**	process and forms, the committees may decide to review the forms in the future should any feedback indicate that the forms require further revision to serve the specific needs of family law litigants. Same as above response. Same as above response. No response required. No response required.

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			identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal training will be required, employees will need to become familiar with the new forms. The addition of new forms will require coding in the case management systems and can be accomplished within a 3 month period, except for the processing of Form APP-022, Order on Appellant's Proposed Settled Statement (Unlimited Civil Cases) which is a mandatory use form. This court will authorize proposed orders to be submitted electronically via e-filing applications and will route the form electronically to judicial officers for review. This form will likely require additional time to implement through automated processes and may require training for processing through electronic workflows. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation.** Yes, except for APP-022, Order on Appellant's Proposed Settled Statement (Unlimited Civil Case). See comment above.	No response required. The committees appreciate this input and thank the commenter for pointing out that proposed new form APP-022 circulated for comment as a mandatory use form. This designation was in error; the form is for optional use. The error has been corrected. See response above.

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	Commenter	**Position**	**Comment**	**Committee Response**
10.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A		The committees note the commenter's support for the proposal and appreciate the responses to questions presented in the invitation to comment.
			Q: Does the proposal appropriately address the stated purpose? Yes.	No response required.
			Q: Would the forms work well in all types of unlimited civil cases? Yes.	No response required.
			Q: Does moving nonparty testimony and evidence to an attachment improve form APP-014? Yes.	No response required.
			Q: Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Updating internal procedures, modifying/creating filings in case management system, and training staff.	No response required.

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	Commenter	**Position**	**Comment**	**Committee Response**
			Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. *[See comments on specific provisions below.]*	No response required.
11.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, Joint Rules Subcommittee	AM	The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC). The JRS notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources. Courtroom and counter clerks will need to be trained on the forms, but this can be done in the normal course of training. • Increases court staff workload. There would be a significant impact to self-help staff, which typically does not assist self-represented litigants on appellate procedures. In addition to training, self-help staff would likely have to develop long-term services and use existing resources to help self-represented litigants with appellate processes, particularly in family law cases.	The committees note the commenter's support for the proposal if modified and appreciate this input regarding the impact of the proposal on court operations. The committees acknowledge courts will incur some costs in implementing the new and revised forms, including potential impacts to self-help staff when more self-represented litigants undertake the settled statement process. However, the committees expect that the new and revised forms will save resources by making the settled statement process easier for parties to understand and access and less burdensome for the courts.

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			Suggested Modifications: Include a "glossary of terms" used in the proposed forms.	A glossary of terms is included in *Information Sheet for Proposed Settled Statement* (form APP-014-INFO).

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
California Lawyers Association, Litigation Section, Committee on Appellate Courts	As APP-001-INFO correctly identifies, a general principle of appellate law is that an appellate court will presume that the judgment or order is correct and imply any findings in favor of the prevailing party at trial to uphold the order. Yet, this form does not explain the general exception to this rule that appellate courts will not make this presumption if a statement of decision has been prepared and the record shows that any omission or ambiguity in that decision was brought to the attention of the trial court by the appealing party. The form further does not explain that some appellate districts may still make this presumption even if the settled statement has been prepared. (Compare *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1282 ["[T]he use of a settled statement in lieu of a reporter's transcript does not negate the doctrine of implied findings where the parties waived a statement of decision."] with *In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 550, fn. 11 [doctrine of implied findings does not apply where statement of decision is waived, and a settled statement including the court's factual and legal basis is used in place of a reporter's transcript]; *In re Marriage of Seaman & Menjou* (1991) 1 Cal.App.4th 1489, 1494, fn. 3 [same]; *In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1580 [same].) As a result, while the new and revised forms make it easier for self-represented litigants to navigate the intricate settled statement process, there are nevertheless concerns that many litigants still will not have meaningful access to an appeal because a statement of decision was not prepared in their case. (See *A.G. v. C.S.*, *supra*, 246 Cal.App.4th 1269 [applying the doctrine of implied findings to affirm a custody order because the settled statement used by the parties did not "contain an express statement by the trial court that it complied with the	The committees appreciate the commenter's having raised this issue, but, if the commenter is suggesting including the doctrine of implied findings in this information sheet, the committees do not recommend this addition. The information sheet describes appellate procedure generally and is written to be understandable and accessible. Any discussion of implied findings beyond the general presumption that a judgment or order is presumed correct would involve technical points of law and would likely be confusing to self-represented litigants. See response below.

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
	procedures required for adopting a statement of decision and that the settled statement serves as the court's statements of decision"].)	
	The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter's transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following:	See response below
	1. Inset in APP-001-INFO: "**Please note the type of oral record you choose, including a reporter's transcript or a settled statement, should be carefully considered as it may have effects on your appeal and you may want to consult with an attorney to determine the best option in your case.**" … *[See chart for form APP-022 for suggestion 2.]*	The committees agree with this suggestion and have incorporated it into the proposal.
	However, we encourage the following amendments to APP-001-INFO to make this form more understandable for survivors of domestic violence with proceedings in family court:	
	Under #3, "Do I need a lawyer to represent me in an appeal": It presently states: "you must put an address, telephone number, fax number (if available)…." Due to safety concerns, survivors of domestic violence may need to keep their information private. Therefore, we suggest adding: "If you want to keep your information private, you may give a different mailing address and telephone number instead, but you should make sure to regularly check the address and telephone number	The committees agree with this suggestion and have incorporated it, along with an advisement to keep the court informed as to any changes in contact information.

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
	provided to stay informed regarding your appeal." **Under #6, "Can I appeal *any* decision the court made?":** Self-represented litigants may not be able to identify that an "injunction" includes a domestic violence restraining order. We encourage the following addition to the fourth bullet point: "Grant or dissolve an injunction or refuse to grant or dissolve an injunction *(including a domestic violence restraining order).*" (See *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 332 [a domestic violence restraining order is appealable under Code of Civil Procedure section 904.1(a)(6)].) In addition, since family law dissolution matters often include final orders of the court before the dissolution judgment that may be appealed as collateral orders, such as child and spousal support orders, we encourage the following addition at the end of the list of CCP 904.1 exceptions: "*In addition, some final orders the court makes before the final judgment may be appealed immediately. You should consult an attorney or a court self-help center to determine if your order is final and appealable*." **Under #9, "Is there a deadline to serve and file my notice of appeal?":** It presently states that the deadline to file the Notice of Appeal is triggered by the service of a "'Notice of Entry' of the trial court judgment or a file-stamped copy of the judgment." However, the deadline also is triggered by service of file-stamped copies of final orders, e.g., fully adjudicated custody orders. Therefore, we suggest adding "*or order*" after the word "judgment" both times, it appears in this section. **Under #11, p. 4, "If I file a notice of appeal, do I still have to**	The committees agree with this suggestion and have incorporated it, with minor alterations, into the proposal. The committees agree with this suggestion and have incorporated it, with minor alterations, into the proposal. The committees agree with this suggestion and have incorporated it, with minor alterations, into the proposal. The committees agree with this suggestion and have

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
	do what the trial court ordered me to do?": In addition to stating the examples of payment of money or delivery of property, we encourage the Judicial Council to add custody matters on the list of examples." (See Code Civ. Proc., § 917.7 [stating that custody matters are not stayed on appeal].)	incorporated it, with minor alterations, into the proposal.
	Page 7, under "(1) Reporter's Transcript…when available": We recommend a change to the following sentence: "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." The sentence will not be accurate in all cases and may confuse some survivors of domestic violence, as it is the practice of some counties to provide court reporters in family law and/or Domestic Violence Prevention Act ("DVPA") matters. Further, to the extent, a litigant has a concern about whether a court reporter was present, the sentence that follows provides clear instruction on what the litigant should do; it states: "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." We suggest the sentence be amended to read: "A court reporter *may* not have been present unless you or another party in your case made specific arrangements to have a court reporter present, *as some counties do not provide court reporters in all cases*." Furthermore, we encourage the following to provide more clarity to APP-001-Info: **Under #2, "What is an appeal?"**: We recommend that a website link be inserted that identifies the counties included in each appellate district.	See response below. The committees agree with changing the word "will" to "may." The committees decline to augment the sentence since the change to "may" adequately addresses the point. The committees agree with this suggestion, and have incorporated it into the proposal.

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
	#18, p. 12, "What is 'oral argument'?": In our experience low-income self-represented litigants do not understand that an appellate "oral argument" is different than a "hearing or trial" such that no new evidence can be considered. In #15 ("what is a brief?") there is an advisement that an appeal is not a new trial. We also suggest that such advisement be included in the Oral Argument section. The following could be added: "*Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or testimony of new witness, so you will not be able to present any new evidence at oral argument*."	The committees agree with clarifying the scope of oral argument, and have added such language to this item.
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	**I. <u>Information on Appeal Procedures Unlimited Cases (Proposed APP-001-INFO)</u>** Without reservation, we support the new information form. We think it is beneficial and, on the whole, accurately explains the appellate process in plain and clear terms. However, we provide the following comments and suggested modifications to help ensure the form meets the goal of assisting the self-represented litigant. **A. Page 1, Column 2: Confusing discussion of the requirements necessary for prevailing on appeal** We find confusing the explanation of the requirements to prevail on an appeal. The two categories-"prejudicial error" and "no substantial evidence"-do not appear to effectively describe the applicable appellate concepts. They also appear to confuse the discreet topics of (I) standard of review; and (2) the general need to establish prejudicial error. Additionally, the description is not written in a simple manner and we believe it would be confusing when read by a self-represented litigant. We suggest	No response required. The committees appreciate this feedback and have made revisions responsive to the comment regarding prejudicial error (see new item 5, "What does the appellant need to prove to win on appeal?"). The committees decline to include a discussion of the standards of review, however, because the topic is complex and any such discussion would likely be confusing to self-represented litigants.

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Form APP-001-INFO		
Commenter	**Comment**	**Committee Response**
	restructuring this discussion into a short, simple, explanation of standards of review, followed by the explanation that a court will not overturn a judgment absent the finding of error that prejudiced the appellant's case in the trial court. **B. Page 2, Column 1: Confusing wording in section 3 entitled, "Do I need a lawyer to represent me in an appeal?"** The first sentence of this section states in part, "if you are an individual (rather than a corporation, for example) .... " This phrase may confuse the self-represented party. We suggest changing the language of the first paragraph of this section to read: Individuals may represent themselves in an unlimited civil case. Corporations and similar entities must be represented by a lawyer. Although individuals are allowed to represent themselves, 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.	The committees decided to retain the original language which follows the plain language convention of addressing the reader and avoids any redundancy.
Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	**Additional suggestion:** **Page 2 of the APP-001-INFO form** (Item 6) – Our Court suggests adding to the list an order that is appealable that is issued by the Probate or the Family Code as another example. The examples currently listed are generally geared toward a civil case and are not the typical orders that one may appeal from in another case type such as family or probate.	The committees agree with the suggestion and have revised the form to include orders that are appealable under the Family Code and the Probate Code.

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Form APP-003		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	The Department recommends an addition to this form. Specifically, parties must check the box Form APP-003, Part 2b(3), to indicate they wish to proceed with a settled statement under rule 8.137 as part of the record of the oral proceedings in the superior court. The Department recommends that Part 2b(3) indicate that Form APP-025, Appellant's Motion to Use a Settled Statement, must be filed simultaneously with Form APP-003. Providing this additional instruction on the form would help ensure that the parties file all the appropriate forms with the court, thereby avoiding any delays in the proceedings.	The committees agree with adding a reference in item 2b(3)(c) to form APP-025, *Appellant's Motion to Use a Settled Statement*, to inform appellants that they can use this form for the purpose of filing the motion. The instruction cannot require appellants to use this form, however, because the form is optional.
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	In order to make it easier for self-represented litigants to use this form, along with the correct motion, we suggest adding the form number to the language in item 2.b.(3)(c) such that it should read: "(You must serve and file the motion (form APP-025) required under rule…)"	See response above.
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	We generally support the idea of a revised form APP-003. This form has long been seen by APS members as overly complicated and unwieldy for both practitioners and unrepresented litigants. We support the Committee's goals of both simplifying and updating the form to assist parties and address recent changes in the law. But we note some areas where the form falls short of these aspirations, and so we offer the following additional constructive comments.	No response required.

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Form APP-003		
	A. Page 1: The proposed new parenthetical "(what was said)" may be too broad The new proposed parenthetical "(what was said)" on Page 1, Section 2 (Record of Oral Proceedings in the Superior Court) might confuse unrepresented parties, who may read far too much into the phrase when trying to ascertain what must be designated as the record of oral proceedings. For example, the term may be misconstrued to include matters discussed with opposing parties or opposing counsel, including "meet and confer" settlement, or informal discussions over tangential and immaterial matters. We believe the parenthetical would offer more guidance if it explained "what was said" means argument and testimony offered at the trial, or the hearing, from which the appeal was taken.	The committees agree with this suggestion and have incorporated it, with minor alterations, into the proposal.
	B. Page 3: Discussion of "Exhibits" should reflect the modern trial court practice, and should accommodate designation of lodged exhibits First, the "Exhibits" section should recognize and reflect the modern practice of trial courts routinely returning exhibits to parties following the hearing or trial. For example, the form could include a note that if the exhibits relevant to the appeal were returned to the parties and not kept by the trial court, then the party designating the inclusion of the exhibits must return them to the trial court within 10 days after service of the notice designating the exhibit. (See Cal. Rule of Court, Rule 8.122(a)(3).)	The committees agree with this suggestion and have added an instruction regarding designated exhibits that were not kept by the trial court.

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

Form APP-003		
	The Notice should also include a note or a box to check if the party seeking the inclusion of a returned exhibit intends to file the exhibit directly with the appellate court. (See e.g., Rule of Court, rule 8.224(b)(2).)	The committees disagree with making this addition because form APP-003 is appellant's notice designating the record at the outset of the appeal. Rule 8.224 applies to exhibits designated later in the appellate process.
	Second, the "Description" of exhibits should be revised to accommodate exhibits that are lodged with the trial court as part of a Notice of Lodgment. In other words, they should be identified separate from numbered trial exhibits. It is awkward and difficult to identify lodged exhibits merely by number in the section referring to "Exhibits."	The committees decline to make this change because the item already refers to and includes lodged records, which may be described as such. Adding instructions tailored for exhibits that are not numbered could be confusing and would further complicate the form.

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

Form APP-014		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	There is a proposal to remove the requirement on Form APP-014 that an appellant describe how he or she was harmed. The Department recommends keeping this requirement in place as currently contained on Form APP-014, Page 3, Parts 3b.(2)-(3). This information is useful in appellate cases, especially with self-represented parties. It can also alert parties that error alone is not grounds for appeal; rather, there must be harm resulting from the error to form a basis for an appeal.	The committees do not recommend requiring an appellant to describe how he or she was harmed because the information is not necessary for a settled statement and would require the appellant to present a legal analysis. If the description of harm is inartfully drafted, it could result in the forfeiture of arguments on appeal. However, there is an item on prejudicial error (item 5, "What does the appellant need to prove to win on appeal?") in form APP-001-INFO.
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	Regarding the changes to form APP-014, we recommend the form be amended for the appellant to add and describe the harm the errors caused. Although, it may not be required for a settled statement, it will assist the self-represented litigants to identified that there must be an error causing harm to form a basis of an appeal.	See response above.
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	As with the forms discussed above, we support the idea of forms and revisions designed and intended to increase access to justice for unrepresented litigants. Thus, we support the concept of a proposed settled statement form to assist parties and the courts with the preparation of a usable settled statement. Again, we offer the following comments to assist the Committee in meeting its stated purposes. First, we question the requirement (on page 1 of the form) that a party must file a notice of appeal before seeking a settled statement from the trial court. Many times, the process (and result) of obtaining a settled statement helps the self-represented litigant decide whether or not to appeal a trial court decision. Also, the procurement of a settled statement often	No response required. The commenter's suggestion would require amending rule 8.137, which is beyond the scope of the proposal. In addition, a settled statement is a record of the oral proceedings that are relevant to the reasons for the appeal, and requires time and effort by the respondent and the trial court in addition to the appellant. The

Form APP-014		
Commenter	**Comment**	**Committee Response**
	helps an unrepresented litigant obtain paid or pro-bono appellate counsel, who can then assist the party with evaluating the costs, timing, and likely success of the contemplated appeal. However, the current language of California Rule if Court 8.137 states that a party must file a motion in the trial court with a copy of the record designation. (See Cal. R. Court 8.137(a)(l).) This language implies that a motion for a settled statement can only be filed after a notice of appeal is filed. We believe it would be more helpful to the litigants, as well as the trial and reviewing courts, if a notice of appeal was not required, and instead litigants could promptly obtain a settled statement shortly after the challenged ruling or judgment, while memories are fresh, notes are available, and the time for review allows an unrepresented party to seek the advice of appellate counsel before filing a notice of appeal. We therefore suggest that the proposed form need not include a mandatory reference to the date of filing of a notice of appeal. We further suggest that the Committee consider these issues further, in connection with a broader review of the language in Rule 8.137(a). Second, we see significant potential problems with the new format. We have doubts whether it will be helpful to a trial court or to the opposing party. For example, starting with questions about the parties' testimony does not appear to be the most effective way of seeking the relevant "settled statement" because the party's testimony is not necessarily relevant to the potential appellate issues. In many cases the testimony holds very little relevance to the issue giving rise to the appeal. Perhaps of more concern to opposing parties, this proposed format may encourage unrepresented parties to present rambling, argumentative, narrative responses. The proposed structure does not encouraging a clear non-argumentative	committees do not believe that it would function well as an aid to a litigant who is deciding whether to appeal or seeking the assistance of counsel. The committees appreciate this input, and, rather than revising form APP-014, have added a new item to form APP-014-INFO entitled “Overview for completing form APP-014” to guide the appellant in providing information relevant to his or her appeal.

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

Form APP-014		
Commenter	**Comment**	**Committee Response**
	statement of the oral testimony, nor does it allow the parties to dispassionately identify the factual and legal issues arising from the challenged ruling. We believe it is better to start with a description of the order/judgment appealed ---- from, and what specific ruling is being appealed. Currently, this does not appear until page 5 of the proposed form. The form should then ask directed and specific questions of the party, such as: "Are you appealing based upon your disagreement with a particular ruling on the admissibility of a document? A party's oral testimony? A ruling on a motion? A jury instruction? A jury verdict form? And "If so, describe the motion, ruling, document, testimony, instruction, or verdict form, and the nature of any oral argument or testimony relevant (or connected to) to the decision that you are challenging." In this way, the form would direct the party requesting the settled statement to focus on the relevant proceedings rather than encourage a potentially rambling and unhelpful submission.	See response above. The new item on form APP-014-INFO indicates that not all categories on form APP-014 (such as the court's ruling on an objection or the court's ruling on a jury instruction) may apply in the appellant's case.

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

Form APP-014A		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	Proposed Form APP-014, Page 5, Part 4 requires parties to submit Form APP-014A if there was testimony from another party or nonparty witness that is relevant to the reasons for the appeal. Form APP-014A only provides two sections to fill out information regarding such witnesses. At the bottom of Page 2, Part 1c., Form APP-14A indicates if there was additional testimony from other parties or nonparty witnesses, another Form APP-014A should be filled out and attached. This could lead to confusion when parties and/or their attorneys review the record as there is no way to distinguish one Form APP-014A from another Form APP-014A. The Department recommends that Part 1 c. be modified by removing what is stated in parenthesis and instead instructing as follows: If you answered yes: (1) Fill out and attach to this form additional Other Party and Nonparty Witness Testimony and Evidence, Attachment (form APP-014A) as needed. (2) Please indicate the total number of APP-014A forms attached, including this form. This will alert parties that multiple APP-014A will need to be reviewed when the information cannot be provided in a single form.	The committees appreciate the issue, but concluded that asking the appellant for the total number of APP-014A forms could be confusing and likely would not improve this form. Form APP-014A is for optional use; the appellant is free to use it or to draft another document to provide additional testimony. Therefore, any request for the number of APP-014A forms would only apply to appellants who use this form exclusively. The committees will revisit the numbering issue if they receive feedback that this is a problem.
Child Support Directors Association's Judicial Council	In order to clarify that there is additional testimony from other parties or non-party witnesses, the Committee suggest the form	See response above.

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

Form APP-014A		
Commenter	**Comment**	**Committee Response**
Forms Committee by Ronald Ladage, Chair	provide for the total number of additional forms attached. Below is sample language: Please indicate the total number of APP-014A forms attached, including this form.	

SPR18-04

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 and replace form APP-014)
All comments are verbatim unless indicated by an asterisk (*).

Form APP-022		
Commenter	**Comment**	**Committee Response**
California Lawyers Association, Litigation Section, Committee on Appellate Courts	As APP-001-INFO correctly identifies, a general principle of appellate law is that an appellate court will presume that the judgment or order is correct and imply any findings in favor of the prevailing party at trial to uphold the order. Yet, this form does not explain the general exception to this rule that appellate courts will not make this presumption if a statement of decision has been prepared and the record shows that any omission or ambiguity in that decision was brought to the attention of the trial court by the appealing party. The form further does not explain that some appellate districts may still make this presumption even if the settled statement has been prepared. (Compare *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1282 ["[T]he use of a settled statement in lieu of a reporter's transcript does not negate the doctrine of implied findings where the parties waived a statement of decision."] with *In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 550, fn. 11 [doctrine of implied findings does not apply where statement of decision is waived, and a settled statement including the court's factual and legal basis is used in place of a reporter's transcript]; *In re Marriage of Seaman & Menjou* (1991) 1 Cal.App.4th 1489, 1494, fn. 3 [same]; *In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1580 [same].) As a result, while the new and revised forms make it easier for self-represented litigants to navigate the intricate settled statement process, there are nevertheless concerns that many litigants still will not have meaningful access to an appeal because a statement of decision was not prepared in their case. (See *A.G. v. C.S.*, *supra*, 246 Cal.App.4th 1269 [applying the doctrine of implied findings to affirm a custody order because the settled statement used by the parties did not "contain an	No response required. This comment also appears in the chart for form APP-001-INFO. It is reproduced here to provide context for the suggestion regarding form APP-022. See above.

Form APP-022		
Commenter	**Comment**	**Committee Response**
	express statement by the trial court that it complied with the procedures required for adopting a statement of decision and that the settled statement serves as the court's statements of decision"].) The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter's transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following: *[See chart for form APP-001-INFO, above, for suggestion 1.]* … 2. Adding a checked box on APP-022 stating: **"This settled statement contains the court's decision and the court's factual and legal basis for its decision."**	See above. The committees decline to make this change. Adding a checkbox to allow the court to order that the settled statement is also the court's statement of decision would be a substantive change that is beyond the scope of this proposal. Moreover, a statement of decision and a settled statement involve different procedures and serve two different functions. Nothing seems to preclude the court so ordering, but adding a checkbox to indicate that "this settled statement contains the court's decision and the court's factual and legal basis for its decision" would seem to suggest that this is the norm or the preferred practice. In addition, notice to the respondent and an opportunity to have input are implicated if the court certifies the settled statement and, at the same time, declares that it constitutes the court's statement of decision.

Item number:05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23-24, 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

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: Appellate Division Forms. Consider revisions to various appellate division forms to make them clearer and easier to use. Subcommittee: Appellate Division

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 16, 2018

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising several notice of appeal forms and record election forms used in appellate division matters. The revisions provide more complete and accurate information, make corrections, and clarify various items.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Revise *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to provide a way to indicate that there is more than one appellant and to clarify the requirements for serving and filing a notice designating the record on appeal;

2. Revise *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to add references to the appellate fee waiver rules and to expand the sections regarding a reporter's transcript and a transcript from an electronic recording to better describe the respondent's options and responsibilities;

3. Revise *Notice of Appeal (Misdemeanor)* (form CR-132) to clarify the sections regarding appellant's attorney in the trial court and whether court-appointed counsel is being sought on appeal and to add an advisement of the potential penalties for not timely filing a notice regarding the record on appeal;

4. Revise *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) to clarify the section regarding appellant's attorney, to reorganize the section regarding a reporter's transcript to better explain the appellant's options and responsibilities in designating this form of the record of the oral proceedings, and to more accurately set forth the potential penalties for failing to timely file a proposed statement on appeal; and

5. Revise *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to clarify the section regarding appellant's attorney, to set forth the circumstances under which a proposed statement on appeal must be served on the prosecuting attorney, and to more fully describe the options for paying for a reporter's transcript or filing a certified transcript.

The revised forms are attached at pages 7–24.

Relevant Previous Council Action

These forms were approved by the Judicial Council for optional use effective January 1, 2009, except form APP-110, which was approved for optional use effective January 1, 2010. All four forms were revised effective January 1, 2017, as part of an initiative to modernize the appellate rules and forms to facilitate e-filing and e-service. Revisions prior to 2017 reflect changes to appellate division rules, update references to the California Courts website, and make certain nonsubstantive changes.

Analysis/Rationale

The committee received suggestions for revising these forms from a superior court when the forms were subject to revision as part of the modernization project noted above. Several of the suggested changes were included in that proposal; the rest were deferred at that time due to lack of resources. The current revisions are based on the previously deferred suggestions. The committee recommends these revisions to make the forms easier to use and understand for litigants and to reduce the burden on courts that results when litigants fill out the forms incorrectly or fail to take other required action in taking an appeal or designating the record.

Form APP-102, Notice of Appeal/Cross-Appeal (Limited Civil Case)

Appellants in limited civil appeals can file form APP-102 to provide notice of an appeal. The form currently does not provide a way to indicate that there is more than one appellant. To remedy this, the committee recommends adding a check box and an instruction to attach a separate page to list additional appellants.

Under the rules regarding the record in limited civil appeals, an appellant must serve and file a notice designating the record within 10 days of the date the notice of appeal is filed and may file

it together with the notice of appeal. Section 4 of form APP-102 provides information on filing a notice designating the record, but it does not include the requirement of serving the notice or the consequence for failing to file the notice designating the record on time. The committee recommends revising this section of the form to specify the service requirement and state the consequence for failing to file the notice of designation on time.

In addition, this section of form APP-102 is unclear in that appellants often fill it out to state that they have attached the notice designating the record when in fact they have not. This leads to confusion when the trial court asks the appellate division to dismiss the appeal for failure to file the notice of designation. The committee recommends reorganizing this section to clarify the requirement of filing the notice designating the record and the option either to serve and file it together with the notice of appeal or to serve and file it separately but within 10 days of the date of filing of the notice of appeal.

Form APP-110, Respondent's Notice Designating Record on Appeal (Limited Civil Case)
Respondents can use form APP-110 to designate the record on appeal in limited civil cases. The appellant chooses the form of the record of documents and oral proceedings (if any) he or she wishes to use and designates the documents and oral proceedings (if any) to be included in the record. The respondent then may designate additional documents or oral proceedings to be included in the record and has options regarding format and payment.

The committee recommends expanding and reorganizing section 5a regarding the reporter's transcript 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. The committee also recommends rewording the formatting options for the reporter's transcript to be consistent with recently amended Code of Civil Procedure section 271.

Currently, section 5b regarding a transcript from an official electronic recording does not include a way for the respondent to designate additional proceedings to be included in the transcript. The committee recommends revising this section of the respondent's form to be consistent with form APP-103, *Appellant's Notice Designating Record on Appeal (Limited Civil Case).*

Form CR-132, Notice of Appeal (Misdemeanor)
Appellants can use form CR-132 to provide notice of an appeal in a misdemeanor case. The current form requests information about the appellant's attorney in the trial court and on appeal, but the section is confusing. The committee recommends revising the section so that it requests information about the appellant's attorney in the trial proceedings, allows the appellant to indicate if the same attorney is providing representation on appeal, and refers the appellant to another part of the form if appointed counsel on appeal is being requested.

Currently, the form does not inform the appellant of the potential penalties for not timely filing a notice regarding the record on appeal. The committee recommends including an advisement pursuant to rule 8.874(a)(1) that such failure could result in sanctions.

Finally, the current form does not clearly inform the appellant about which forms to complete and attach in order to request a court-appointed lawyer. The committee recommends reorganizing this section to clarify which forms must be submitted.

Form CR-134, Notice Regarding Record on Appeal (Misdemeanor)

This is the optional form appellants can use to designate the record on appeal in a misdemeanor case. Similar to form CR-132, the request for information about the appellant's attorney is confusing. The committee recommends a similar revision so that it requests information about appellant's attorney in the trial court proceedings and allows the appellant to indicate if the same attorney is providing representation on appeal.

The section of the form that allows an appellant to designate a reporter's transcript as the record of the oral proceedings is incomplete in several respects. The committee recommends revisions to allow the appellant to provide a certified transcript and to provide more information regarding how and when to pay for the reporter's transcript.

In addition, form CR-134 does not accurately inform the appellant who chooses to provide a statement on appeal as the record of the oral proceedings of the potential penalties for not timely filing the proposed statement. Currently, the form advises that such failure could result in dismissal of the appeal. However, the rule provides that the potential penalty for appellants who are represented by appointed counsel is the dismissal of counsel and appointment of new counsel. For appellants who are not represented by appointed counsel, the potential penalty is dismissal of the appeal. The committee recommends revising the advisement accordingly.

Form CR-142, Notice of Appeal and Record on Appeal (Infraction)

Appellants can use form CR-142 to provide notice of appeal and to designate the record on appeal in an infraction case. The form contains the same request for information about the appellant's attorney as in forms CR-132 and CR-134. The committee recommends the same revisions, that the section be revised so that it requests information about the appellant's attorney in the trial court proceedings and allows the appellant to indicate if the same attorney is providing representation on appeal.

Form CR-142 allows the appellant to designate a statement on appeal as the record of the oral proceedings in the trial court. The form explains the requirement that, if the proposed statement on appeal is not attached to form CR-142, the appellant must file it within 20 days. However, this section contains no information on any service requirements. The committee recommends advising the appellant that the proposed statement must be served on the prosecuting attorney if the prosecuting attorney appeared in the case.

Policy implications

This proposal raises no policy implications.

Comments

The proposed revisions to the forms were circulated for public comment between April 9 and June 8, 2018, as part of the regular spring comment cycle. Five organizations submitted comments on this proposal. Four commenters agreed with the proposal without providing specific comments; one agreed with the proposal if modified and provided substantive comments. A chart with the full text of the comments and the committee's responses is attached at pages 25–27.

The substantive comments and the committee's responses are discussed below.

Comments on form APP-102

One of the revisions to form APP-102, *Notice of Appeal (Limited Civil Case)*, provides a check box to indicate that there is more than one appellant and instructions to attach a separate page listing them and their contact information. However, there is only one signature line at the end of the form. The Superior Court of Los Angeles County pointed out that rule 8.821(a)(1) requires that the notice of appeal must be signed by the appellant or the appellant's attorney and suggested that more signature lines should be added.

Based on this comment, the committee recommends adding two additional signature lines to this form.

Comments on form CR-132

As described above, one of the revisions to this form adds an advisement of the potential penalties for failing to timely file a notice regarding the record on appeal. The proposed revision that circulated for comment simply stated that such failure could result in appointment of new counsel or dismissal of the appeal. The Superior Court of Los Angeles County suggested specifying that new counsel will be appointed if the appellant is represented by appointed counsel on appeal.

Based on this comment, the committee recommends a more substantial revision to clarify that the potential penalty the court may impose depends on whether the appellant is represented by appointed counsel or not. (See Cal. Rules of Court, rule 8.874(a)(1).) The advisement now states that if the appellant is represented by appointed counsel on appeal, the failure to timely file the notice could result in appointment of new counsel; if the appellant is self-represented or has retained counsel, such failure could result in dismissal of the appeal. The warning is phrased as permissive, not mandatory, because the rule provides that the sanctions are discretionary.

Comments on form CR-134

The committee recommends the same clarification to the warning regarding the potential penalties for failure to procure the record as those discussed immediately above.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the committee considered recommending no changes to these forms but rejected this alternative because

corrections were necessary to make the forms consistent with the rules of court and recent statutory changes. In addition, the clarifications and additional information are designed to assist litigants by making the forms more user friendly and helpful, and to assist the courts by reducing the number of forms that are completed or filed incorrectly.

Fiscal and Operational Impacts

The Los Angeles Superior Court stated that the proposal would provide cost savings by reducing defaults resulting from lack of a signature and that only minimal training would be needed to implement the revised forms.

Attachments and Links

1. Forms APP-102, APP-110, CR-132, CR-134, and CR-142, at pages 7–24
2. Chart of comments, at pages 25–27

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

Clerk stamps date here when form is filed.

DRAFT

08-16-2018

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

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

☐ *Check here if there is 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: _____ _____ _____ _____
Street *City* *State* *Zip*

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

Phone: _____ E-mail: _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

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

a. ☐ The first appeal in this case.

b. ☐ A cross-appeal (an appeal filed after the first appeal in this case *(complete (1), (2), and (3)).*

(1) The notice of appeal in the first appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case):* _____

(2) The trial court clerk served notice of the first appeal on *(fill in the date that the clerk served the notice of the other party's appeal in this case):* _____

(3) The appellate division case number for the first appeal is *(fill in the appellate division case number of the other party's appeal, if you know it):* _____

3 Judgment or Order You Are Appealing

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

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was *(fill in the date):* _____

b. ☐ Other:

(1) ☐ An order made after final judgment in the case.
The date the trial court entered this order was *(fill in the date):* _____

(2) ☐ An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was *(fill in the date):* _____

(3) ☐ An order granting a motion to quash service of summons.
The date the trial court entered this order was *(fill in the date):* _____

(4) ☐ An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was *(fill in the date):* _____

(5) ☐ An order granting a new trial.
The date the trial court entered this order was *(fill in the date):* _____

(6) ☐ An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was *(fill in the date):* _____

(7) ☐ An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was *(fill in the date):* _____

3 *(continued)*

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

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

_____
_____
_____
_____
_____
_____

4 Record Preparation Election

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

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*

Date: _____

_____ ▶ _____
Type or print your name *Signature of appellant/cross-appellant or attorney*

Date: _____

_____ ▶ _____
Type or print your name *Signature of appellant/cross-appellant or attorney*

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

Clerk stamps date here when form is filed.

DRAFT

08-16-18

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

Name: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About the Appeal

(2) On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

(4) The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

a. ☐ **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those documents here.*

(1) **Documents**

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

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

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

(2) **Exhibits**

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

Exhibit Number	Description	Admitted Into Evidence
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

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

4 *(continued)*

b. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check 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)				☐ Yes ☐ No
(b)				☐ Yes ☐ No
(c)				☐ Yes ☐ No
(d)				☐ Yes ☐ No
(e)				☐ Yes ☐ No
(f)				☐ Yes ☐ No
(g)				☐ Yes ☐ No

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

5 a. *(continued)*

(2) ☐ **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. *(Check and complete (a) or (b).)*

(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 *(check and complete (i) or (ii)):*

(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 from an official electronic recording.** I request a copy of this 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*

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

DRAFT

08-16-18

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 a court-appointed lawyer 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: _____

Trial Court Case Name: _____ Trial Court Case Number:

2 Judgment or Order You Are Appealing

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

a. ☐ The final judgment of conviction in this case (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, I understand that if I am represented by a court-appointed lawyer and I do not file the notice regarding the record on time, the court may appoint a new lawyer. If I represent myself or hire a lawyer to represent me, and I do not file the notice regarding the record on time, the court may 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*

CR-134 Notice Regarding Record on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

DRAFT

08-16-18

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*.
- 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): _____

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 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. *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. *The court will review this form to decide if you are eligible for a transcript at no cost to you.)*

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. *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.)

(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. I understand that if I do not file the proposed statement on time, and if I am represented by a court-appointed lawyer, the court may appoint a new lawyer. If I represent myself or hire a lawyer to represent me, and I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

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

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

Clerk stamps date here when form is filed.

DRAFT

07-31-18

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.)

(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. *The court will review this form to decide if you are eligible for a free transcript.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov /forms. *The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*

5 *(continued)*

OR

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

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*. 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*

SPR18-05

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)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Lawyers Association, Litigation Section, Committee on Appellate Courts	A	The Committee on Appellate Courts supports this proposal. The proposal appropriately addresses the stated purpose by providing more complete and accurate information, making corrections, and clarifying various items.	The committee notes the commenter's support for the proposal and appreciates the input.
2.	Child Support Directors Association, Judicial Council Forms Committee by Ronald Ladage, Chair	A	The Committee agrees with the proposed revisions to forms APP-102 and APP-110, as drafted.	The committee notes the commenter's support for the proposal and appreciates the input.
3.	Orange County Bar Association by Nikki P. Miliband, President	A	*No additional comments*.	The committee notes the commenter's support for the proposal and appreciates the input.
4.	Superior Court of California, County of Los Angeles	AM	**Suggested Modifications:** **Form APP-102:** The proposed change to allow multiple parties to submit one notice of appeal requires more space for multiple signatures. Currently California Rules of Court, rule 8.821(a)(1) requires that the notice of appeal must be signed by the appellate or the appellant's attorney. Additional signature lines should be added. **Form CR-132 Notice of Appeal (Misdemeanor):** Page 2, box 3(b) - Last sentence suggests that an appellant may receive new counsel if appellant's attorney fails to timely file form CR-	The committee notes the commenter's support for the proposal if modified and thanks the commenter for the specific feedback. The committee agrees with the commenter and has made the proposed modification to form APP-102. The committee agrees that item 3(b) should be revised to clarify that the potential penalty the court may impose depends on whether the

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

SPR18-05

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)

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

	Commenter	Position	Comment	DRAFT Committee Response
			134. It should specify that new counsel will be appointed if the appellant is represented by appointed counsel on appeal.	appellant is represented by appointed counsel or not. (See rule 8.874(a)(1).) The warning is phrased as permissive, not mandatory, because the rule provides that the sanctions are discretionary. In addition, a similar warning regarding the penalties for failure to procure the record on appeal appears in form CR-134. The committee recommends a similar revision to clarify item 5d(2).
			Request for Specific Comments: **Does the proposal appropriately address the stated purpose?** Yes, however, please see the proposed changes above.	See responses above.
			Would the proposal provide cost savings? If so please quantify. Yes, this will prevent parties from being defaulted for lack of signature. The process is much cleaner.	No response required.
			What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal training would be needed.	No response required.

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

SPR18-05

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)

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

	Commenter	Position	Comment	DRAFT Committee Response
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
5.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	*No additional comments*.	The committee notes the commenter's support for the proposal and appreciates the input.

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

Item number:06

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23-24, 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

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Ingrid Leverett, (415) 865-8031, 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: Modernize Appellate Court Rules for E-filing and E-business (Annual Agenda Item 5) re Sealed & Confidential Material: Rules for the handling of sealed or confidential materials that are submitted electronically.

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

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018

Title
Rules Modernization: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 16, 2018

Contact
Ingrid Leverett, (415) 865-8031
Ingrid.Leverett@jud.ca.gov

Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending the rules that establish procedures for handling sealed and confidential materials to address records 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 that is denied. The proposal would (1) harmonize the appellate rules with parallel trial court rules governing sealed records, (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.

Recommendation

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Amend rules 8.45 and 8.46 to 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;

2. Add new subdivision (e) to rule 8.46 to clarify procedures for transmitting, conditionally sealing, and returning or deleting a record that is the subject of a challenge to a trial court order denying a motion or application to seal;

3. Amend rule 8.46 to require that the notice sent by a court proposing to unseal a record on its own motion include the court's reason for unsealing the record;

4. Amend rules 8.46 and 8.47 to:

    - Provide that when the court denies a motion or application to seal, if the moving party does not timely direct the clerk to file the lodged record unsealed, the clerk must delete the lodged record if it is in electronic form, consistent with rule 2.551;

    - 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, consistent with trial court rules; and

    - Make other minor changes in language and punctuation intended to clarify the rules.

Relevant Previous Council Action

The Judicial Council adopted the predecessor to rule 8.46 effective January 1, 2001, along with similar rules for the trial courts, to establish uniform procedures regarding records sealed by court order. Effective January 1, 2004, the Judicial Council amended these rules to clarify the factual findings a court must make before sealing a record and the standard for their unsealing. Subsequent amendments clarified the applicability of the rule to various proceedings.

Effective January 1, 2014, the Judicial Council adopted new article 3 in chapter 1 of division 1 of title 8 of the California Rules of Court to serve as the location for the rules concerning sealed and confidential records in the Supreme Court and Courts of Appeal. As part of new article 3, the Judicial Council adopted new rule 8.45 to establish definitions and set forth general provisions governing sealed and confidential records in the reviewing courts. At the same time, the Judicial Council adopted new rule 8.47 to establish requirements relating to confidential records in Supreme Court and Court of Appeal proceedings, and amended rule 8.46 to make conforming changes and to add provisions regarding redacted and unredacted submissions.

Effective January 1, 2016, the Judicial Council amended rules 8.46 and 8.47 to add language requiring that all sealed or confidential documents that are transmitted electronically be transmitted in a secure manner.

Analysis/Rationale

The goal of the current proposal is to harmonize rules 8.45, 8.46, and 8.47 with one another and with parallel trial court rules (rules 2.550 and 2.551), including adding provisions to address records that are lodged electronically.

Rules 2.550 and 2.551 govern the handling of sealed records in the trial court. Effective January 1, 2017, the Judicial Council revised rule 2.551 to provide that, unless otherwise ordered, the moving party has 10 days following an order denying a motion or application to seal to direct the court to file the lodged material unsealed. If the clerk receives no notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete them if lodged in electronic form.

Unlike rule 2.551, the appellate rules do not specifically address the handling of a lodged electronic record. The proposed amendments to rules 8.46 and 8.47 provide that when the court denies a motion or application to seal, if the moving party does not timely direct the clerk to file the lodged record unsealed, the clerk must delete the lodged record if it is in electronic form, consistent with rule 2.551.

For internal consistency among the three appellate rules at issue (rules 8.45, 8.46, and 8.47), the amendments add to rule 8.45 and several subdivision of rule 8.46 a requirement that sealed and confidential records be transmitted in a secure manner that preserves their confidentiality (a provision that is already in rule 8.47 and in one subdivision of rule 8.46). The amendments also add to rule 8.47 language which directs that when an unredacted record is lodged with a reviewing court, the particular sealed or confidential material within the record be identified as such (language that is already in rule 8.46).

A new proposed subdivision (e) to is added to rule 8.46 to address the handling of records that are the subject of review in an appeal or original proceeding challenging a lower court's denial of a motion or application to seal. Under subdivision (e), the record at issue would remain conditionally under seal while the review proceeding was pending. After the reviewing court's decision becomes final, the clerk is required to return the record to the lodging party if it is in paper form, or permanently delete it if it is in electronic form.

Finally, for consistency with trial court rule 2.551, rule 8.46 is amended to require that the notice sent by a reviewing court proposing to order a record unsealed on its own motion state the reason for unsealing the record.

Policy implications

This proposal furthers the goals of (1) consistency between the trial court rules and the appellate rules, including the handling of records lodged in electronic format, and (2) internal consistency within the appellate rules.

Comments

Five organizations submitted comments on this proposal. Two bar associations and one superior court agreed with the proposed rule amendments. Two child support organizations agreed with the proposal if modified. Both raised the same substantive issue and suggest that the same additional language be added. A chart with the full text of the comments received and the committees' responses is attached at pages 13-15.

The two commenters who agreed with the proposal if modified suggest that proposed new subdivision (e) to rule 8.46 could potentially be construed as expanding the right to appeal evidentiary rulings and providing for a stay of the proceedings during the pendency of such an appeal. The commenters suggest adding the following language clarifying that new subdivision (e) is not intended to expand availability of appellate review: "This paragraph is not intended to expand the scope of relief available but only to prescribe the manner [in] which confidential records are maintained."

Although a rule of court cannot expand appellate jurisdiction, the committees were sensitive to the request for clarification and considered adding language to the rule—either the language suggested by the commenters or other language. The committees also considered whether to address the issue in an Advisory Committee Comment. Because this is a point of clarification, the committees recommend revising the proposal to add an Advisory Committee Comment as follows:

> **Subdivision (e)**. This subdivision is not intended to expand the availability of existing appellate review for any person aggrieved by a court's denial of a motion or application to seal a record.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the committees considered not proposing these amendments. The committees concluded that the proposed 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, (3) make the appellate court rules internally consistent regarding the handling of sealed and confidential records, and (4) clarify the proper procedure for handling sealed and confidential records that are the subject of a proceeding in a reviewing court.

Fiscal and Operational Impacts

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures for disposing of lodged electronic records when the court denies a motion or application to seal and for handling records lodged with the court that are the subject of a challenge to a trial court order denying a motion or application to seal. However, the committees expect that the amended rules will ease the burden on the courts by providing additional guidance and procedures for handling sealed and confidential records, and particularly lodged electronic records. No other costs or implementation challenges are expected.

Attachments and Links

1. Cal. Rules of Court, rules 8.45–8.47, at pages 6-12
2. Chart of comments, at pages 13-15

Rules 8.45–8.47 of the California Rules of Court are amended, effective January 1, 2019, to read:

Rule 8.45. General provisions

(a)–(c) * * *

(d) Transmission of and access to sealed and confidential records

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

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

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

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

~~(4)~~(5) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b)(5). * * *

Subdivisions (c) and (d). * * *

Subdivision (c)(1)(C). * * *

Subdivision (c)(2). * * *

Subdivision (c)(3). * * *

Subdivision (d). * * *

Subdivision (d)~~(1)~~(2) and ~~(2)~~(3). * * *

Subdivision (d)~~(4)~~(5). * * *

Rule 8.46. Sealed records

(a)–(c) * * *

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

(1)–(6) * * *

(7) If the court denies the motion or application to seal the record, ~~the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application~~ the lodging party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the lodging party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the lodging party if it is in paper form, or (2) permanently delete the lodged record if it is in electronic form.

(8)–(9) * * *

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

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

~~(e)~~(f) Unsealing a record in the reviewing court

(1)–(2) * * *

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

(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) * * *

(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) * * *

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

Advisory Committee Comment

* * *

Subdivision (e). This subdivision is not intended to expand the availability of existing appellate review for any person aggrieved by a court's denial of a motion or application to seal a record.

Rule 8.47. Confidential records

(a) * * *

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

(1) * * *

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

(A) The brief, including any portion that discloses matters contained in the transcript of the in-camera hearing, and other documents filed or lodged in connection with the hearing, must be filed publicly. The requirement

to publicly file this brief does not apply in juvenile cases; rule 8.401 governs the format of and access to such briefs in juvenile cases.

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

(C) * * *

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

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

(A) * * *

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

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

(i) * * *

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record." Conditionally sealed

material disclosed in this version must be identified as such in the filing.

(D) If the court denies the motion or application to file the brief, petition, or other filing under seal, ~~the clerk must not place the unredacted brief, petition, or other filing lodged under (C)(ii) in the case file but must return it to the defendant unless the defendant notifies the clerk in writing that it is to be filed. Unless otherwise ordered by the court, the defendant must notify the clerk within 10 days after the order denying the motion or application~~ the defendant may notify the court that the unredacted brief, petition, or other filing lodged under (C)(ii) is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to file the brief, petition, or other filing under seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the lodged unredacted brief, petition, or other filing. If the defendant does not notify the court within 10 days of the order, the clerk must (1) return the lodged unredacted brief, petition, or other filing to the defendant if it is in paper form, or (2) permanently delete the lodged unredacted brief, petition, or other filing if it is in electronic form.

(c) Other confidential records

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

(1) * * *

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

(A)–(C) * * *

(D) If the court denies the motion or application to file the brief, petition, or other filing under seal, ~~the clerk must not place the unredacted brief, petition, or other filing lodged under (C)(ii) in the case file but must return it to the lodging party unless the party notifies the clerk in writing that it is to be filed. Unless otherwise ordered by the court, the party must notify the clerk within 10 days after the order denying the motion or application~~ the party who filed the motion or application may notify the court that the unredacted brief, petition, or other filing lodged under (C)(ii) is to be filed unsealed. This notification must be received

within 10 days of the order denying the motion or application to file the brief, petition, or other filing under seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the lodged unredacted brief, petition, or other filing. If the party who filed the motion or application does not notify the court within 10 days of the order, the clerk must (1) return the lodged unredacted brief, petition, or other filing to the lodging party if it is in paper form, or (2) permanently delete the lodged unredacted brief, petition, or other filing if it is in electronic form.

Advisory Committee Comment

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.

SPR18-06

Appellate Procedure: 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)

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

	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Kristen Donadee Assistant Chief Counsel Rancho Cordova, CA	AM	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the rules with potential impacts to the Department and its stakeholders is set forth below. Rule 8.46 - Sealed records The Department recommends clarification regarding Rule 8.46, subdivision (e), which is related to challenges to an order denying a motion or application to seal a record. Evidentiary rulings are not always subject to immediate appeals. It is unclear if this rule intends to stay the proceedings while an evidentiary ruling is appealed. Clarifying this point would be beneficial to the parties when considering whether to appeal evidentiary rulings regarding motions and applications to seal records. If this is not the JCC's intent, the Department respectfully suggests adding language to subsection e, which provides as follows: This paragraph is not intended to expand the scope of relief available but	The committees note the commenter's agreement with the proposal if modified. The committees appreciate this feedback. Although a rule of court cannot expand appellate jurisdiction, the committees note the concern and have revised the proposal to add an Advisory Committee Comment, as follows: **Advisory Committee Comment** **Subdivision (e)**. This subdivision is not intended to expand the availability of existing appellate review for any person aggrieved by a court's denial of a motion or application to seal a record.

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

SPR18-06

Appellate Procedure: 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)

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

	Commenter	Position	Comment	Committee Response
			only to prescribe the manner of which confidential records are maintained. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	
2.	California Lawyers Association, Committee on Appellate Courts of the Litigation Section San Francisco, CA	A	The Committee on Appellate Courts supports this proposal and responds as follows to the Invitation to Comment's request for specific comments. **Does the proposal appropriately address the stated purpose?** Yes, the new and revised forms achieve the stated purpose because (1) when motion to seal is denied, it requires the clerk to either return paper copies submitted, or delete electronic copies; (2) it requires sealed documents to be transmitted to the reviewing court in a secure and confidential manner; (3) it clarifies procedures for transmitting and conditionally sealing materials where the ruling denying sealing is challenged on appeal; and (4) it clarifies procedures for lodging unredacted materials in the appellate court. **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**	The committees note the commenter's support for the proposal. The committees appreciate this feedback.

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

SPR18-06

Appellate Procedure: 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)

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

	Commenter	Position	Comment	Committee Response
			application to seal that record—helpful, and does it provide sufficient guidance? Yes, new subdivision (e) is helpful and provides sufficient guidance.	The committees appreciate this feedback.
3.	Child Support Directors Association, Judicial Council Forms Committee by Ronald Ladage, Chair	AM	The Committee is concerned that Rule 8.46 subdivision (e), may be interpreted to expand the scope of relief that may be available. Assuming this is not the intent of the Rule, we suggest adding the following language to subsection (e): This paragraph is not intended to expand the scope of relief available, but only to prescribe the manner of which confidential records are maintained. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	See response to comment No. 1, above.
4.	Orange County Bar Association by Nikki P. Miliband, President	A	No specific comment.	The committees note the commenter's agreement with the proposal. No further response required.
5.	Superior Court of San Diego County by Mike Roddy, CEO	A	No specific comment.	The committees note the commenter's agreement with the proposal. No further response required.

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

Item number: 07

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Proposed additions, revisions, and deletions to the Judicial Council of California Criminal Jury Instructions (CALCRIM)

Committee or other entity submitting the proposal:
Advisory Committee on Criminal Jury Instructions

Staff contact (name, phone and e-mail): Kara Portnow, 865-4961, kara.portnow@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: Maintenance, New Instructions and Expansion into New Areas, Technical Corrections

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Jury Instructions: Additions, Deletions, and Revisions to Criminal Jury Instructions

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Criminal Jury Instructions (CALCRIM)

Recommended by
Advisory Committee on Criminal Jury Instructions
Hon. René Auguste Chouteau, Chair

Agenda Item Type
Action Required

Effective Date
September 21, 2018

Date of Report
August 1, 2018

Contact
Kara Portnow, Staff Attorney
Criminal Justice Services
415-865-4961
kara.portnow@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approval of the proposed revisions and additions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes will keep *CALCRIM* current with statutory and case authority.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective September 21, 2018, approve for publication under rule 2.1050 of the California Rules of Court the criminal jury instructions prepared by the committee. Once approved, the revised instructions will be published in the next official edition of the *Judicial Council of California Criminal Jury Instructions*.

A table of contents and the proposed revisions to the criminal jury instructions are attached at pages 10–135.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.[1] In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court.

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM*. The council approved the last *CALCRIM* release at its March 2018 meeting.

Analysis/Rationale

The committee recommends proposed revisions to the following instructions: CALCRIM Nos. 580, 800, 1520, 1600, 1820, 2181, 2330, 2350, 2351, 2352, 2361, 2363, 2370, 2375, 2376, 2384, 2390, 2391, 2392, 2393, 2410, 2748, 3403, 3406, 3412, 3413, and 3550. It recommends approval of the following new instructions: CALCRIM Nos. 2364 and 3415. It also recommends deletion of the following instructions: CALCRIM Nos. 2360, 2362, and 2377.

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes, focusing on revisions in the wake of Proposition 64. One pervasive change was replacing the term "marijuana" with "cannabis," as Health & Safety Code section 11018 now requires.[2]

Felony Cannabis Penalty Allegations (proposed new CALCRIM No. 2364) with revisions to related CALCRIM Nos. 2350, 2351, 2361, 2363

Proposition 64, as implemented in Senate Bill 94, lowered the penalties for sales, transportation, and distribution of cannabis. It also created new penalty allegations for cannabis sales to qualify as felonies. Four CALCRIM instructions (Nos. 2350, 2351, 2361, and 2363) relate to Health & Saf. Code section 11360. The committee drafted a new instruction (No. 2364) to describe the penalty allegations for offenses under section 11360. The committee also modified the four existing instructions to include a reference to the new instruction.

Possession for Sale of Cannabis (CALCRIM No. 2352)

Proposition 64 created new penalty allegations for possession of cannabis for sale. The committee added the new penalty allegations to the existing instruction.

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[1] Rule 10.59(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's criminal jury instructions."

[2] All future code citations are to the Health and Safety Code, unless otherwise noted.

Lawful Use Defense **(Proposed NEW CALCRIM No. 3415)**
Proposition 64 legalized specified cannabis-related activities for adults 21 years and older. The committee drafted a new instruction entitled "Lawful Use Defense" for these activities, as codified in section 11362.1.

Cultivation of Cannabis **(CALCRIM No. 2370)**
Proposition 64 created new penalty allegations for cultivation of marijuana. The committee added the new penalty allegations into the existing instruction.

Simple Possession of Cannabis **(CALCRIM Nos. 2375 and 2376)**
Proposition 64 legalized simple possession of no more than 8 grams of concentrated cannabis. The committee added the new weight requirement for concentrated cannabis to these instructions. The committee also changed the age requirement in No. 2376 from an element to a sentencing factor to conform the instruction with the modifications made in the other instructions.

Proposed deletion of CALCRIM Nos. 2360, 2362, and 2377
CALCRIM Nos. 2360 and 2362 relate to transporting, offering to transport, or giving away not more than 28.5 grams of cannabis. CALCRIM No. 2377 relates to simple possession of concentrated cannabis. After Proposition 64, these offenses are now infractions and are therefore not subject to jury trials.

CALCRIM Nos. 2330, 2384, 2390, 2391, 2392, 2393, 2410, 2748, 3403, 3406, 3412, 3413
The committee made nonsubstantive nomenclature changes from "marijuana" to "cannabis" in these instructions.

Unlawful Taking or Driving of Vehicle **(CALCRIM No. 1820)**
People v. Page (2017) 3 Cal.5th 1175, 1183–1187 [225 Cal.Rptr.3d 786, 406 P.3d 319] holds that, in a felony prosecution of Vehicle Code section 10851, Proposition 47 requires proof that the vehicle taken was worth more than $950 if the defendant intended to permanently deprive the owner of possession or ownership. The committee added alternative elements to use when the prosecution's theory is joyriding, taking with intent to temporarily deprive, and theft with intent to permanently deprive. The committee also added the case citation to the authority section.

Evading Peace Officer **(CALCRIM No. 2181)**
Recent case law analyzed Vehicle Code section 2800.2 and clarified the statute's requirements. In *People v. Leonard* (2017) 15 Cal.App.5th 275, 281 [222 Cal.Rptr3d 868], the court held that Vehicle Code section 2800.2 does not require evidence that the defendant was personally assessed traffic violation points. In *People v. Taylor* (2018) 19 Cal.App.5th 1195, 1203 [228 Cal.Rptr.3d 575], the court held that driving with "willful or wanton disregard" is not an essential element and that the statute can be violated alternatively by simply proving the commission of three or more traffic violations. Following these holdings, the committee modified the instruction by adding alternative elements and by changing the language to show that the defendant need not have been personally assessed traffic violation points.

Predeliberation Instructions (CALCRIM No. 3550)

In *People v. Hicks* (2017) 4 Cal.5th 203, 205–206 [226 Cal.Rptr.3d 565, 407 P.3d 409], the California Supreme Court suggested language to instruct the jury in a retrial. Following this suggestion, the committee added optional language to inform the jury about prior proceedings.

Policy implications

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from May 22 through June 22, 2018. The committee received input from six commenters. Three of the comments raised issues outside the scope of the proposed modifications. Two comments suggested linguistic changes that the committee adopted. The text of all comments received and committee responses is included in a comments chart attached at pages 5–9.

Alternatives considered

The proposed revised instructions are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 5–9
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 10–135

CALCRIM 2018, Summer Invitation to Comment

Revised CALCRIM Instructions

The longer comments have been lightly edited.

Instruction	Commentator	Comment	Response
580, 800, 1520, 1600, 2181, 2350, 2351, 2363, 2364, 2352, 2370, 2375, 2376, 3415, 2330, 2384, 2390, 2391, 2392, 2393, 2410, 2748, 3403, 3406, 3412, 3413, 2360, 2362, 2377, 3550	Nikki Miliband, President of Orange County Bar Association	Agree	No response necessary.
580	Samuel Pillsbury, Professor of Law, Loyola Law School	I have some comments on the proposed Section 580 Involuntary Manslaughter instruction. In the second paragraph, I would eliminate the word willful with respect to a willful act. If the phrase is meant to mean voluntary act, the phrase should be voluntary act. But to use the term willful, is to invite confusion with respect to the rest of the phrase "full knowledge and awareness." The critical mens rea here is awareness, not willfulness. I would also choose between "full knowledge" or "full awareness" but not both, simply because they are synonyms and it furthers no purpose to have both when one will do the trick. I believe the last sentence of the second paragraph should include a reference to negligence – the essential message being that involuntary manslaughter is a killing done by a negligent act rather than one with either intent to kill or conscious disregard of risks to human life. Leaving negligence out at this stage can be an additional source of confusion. In the following paragraph, I would substitute AND for the semi-colon between n. 1 and 2, to make clear that this is conjunctive rather than disjunctive. This is a bit of	These comments raise issues outside the scope of the current invitation to comment. The committee will consider them at its next meeting.

Instruction	Commentator	Comment	Response
		grammatical overkill normally, but again I think useful to avoid potential confusion. The subsequent definition of criminal negligence is particularly confusing with the reference to a "reckless way that creates a high risk of death or great bodily injury." The standard definition of recklessness which has been used in Anglo-American jurisprudence for many years is that of awareness of a substantial and unjustifiable risk, as distinct from negligence which involves a person who should have been aware of a substantial and unjustifiable risk. If you wish to use recklessness here (and I don't think you should), I believe it must be defined to show how it is consistent with negligence. Regardless of how the word may have been used in California appellate decisions on involuntary manslaughter in the past, its appearance here is very problematic. Similarly, in the following paragraph that seeks to further define criminal negligence in terms of the "ordinarily careful person" I find it confusing to see the language of "disregard for human life or indifference to the consequences of that act" because this is so similar to the language of so-called depraved heart murder, second-degree murder and the conscious disregard that the instruction earlier worked to distinguish from this offense. Some other phrase such as "basic lack of concern for the consequences to human life" might work. In my own writing on the criminal law, I often use language about disregard and indifference, so the words are not in themselves problematic, but I worry about confusion between distinct doctrines.	
1820	Riverside Superior Court	CALCRIM No. 1820 (p. 20) sets forth three alternatives: (1) joyriding, (2) theft with intent to temporarily deprive, and (3) theft with intent to permanently deprive. However, the Cal.	The committee agrees with the first comment and has made the suggested change. In response to the second comment, the

The longer comments have been lightly edited.

Instruction	Commentator	Comment	Response
		Supreme Court has explained that the second alternative is not actually a form of theft; theft requires an intent to permanently deprive or the functional equivalent. (*People v. Page* (2017) 3 Cal.5th 1175, 1182–83; see *People v. Davis* (1998) 19 Cal.4th 301, 307 & fn. 4.) We recommend replacing "theft" with "taking" in the title of the second alternative. Also, on the same instruction, with regard to the third alternative, it seems to suggest that the third element (that the car was worth more than $950) must always be proved in order to establish a theft under that alternative, but that is not how we read *People v. Page* (2017) 3 Cal.5th 1175 and the interplay between Vehicle Code section 10851 and Penal Code section 490.2. It is our view that the value must only be established in order to make it a felony; if only the first two elements are proved, then it's a misdemeanor Vehicle Code section 10851 equivalent to a petty theft. It is true that the point is arguable; there is a question as to whether Penal Code section 490.2 creates a six-month cap for all petty thefts (see Penal Code section 19), or whether it permits punishment under another theft statute so long as the punishment does not exceed one year (Penal Code section 19.2). But since that is still an open question, we suggest at least considering reworking the brackets to make it clear that the third element of the third alternative is only required in felony prosecutions, and can be omitted in misdemeanor prosecutions.	committee has added "felony" to the title to clarify that the instruction, in its current form, does not apply to misdemeanor auto thefts. Additional changes to this instruction will be considered by the committee at the next meeting.
1820	Nikki Miliband, President of Orange County Bar Association	The proposed amendments to CALCRIM 1800 adds a citation to *People v. Page* (2017) 3 Cal.5th 1175 to the "Authority" section of the instruction under subject heading, "Vehicle Value Must Exceed $950 for Felony Taking With Intent to Permanently Deprive."	The committee agrees with the comment to substitute the word "taking" for "theft" in the heading for Alternative B, and has made this change.

The longer comments have been lightly edited.

Instruction	Commentator	Comment	Response
		The proposed amendment also breaks down violations of Vehicle Code section 10851 into three different legal theories. The first, entitled "Alternative A—joyriding," lays out the elements for driving a vehicle without the owner's consent. The second, entitled "Alternative B—theft with intent to temporarily deprive," delineates the elements for taking a vehicle without the consent of the owner on a theory that the person doing the taking had the intent to temporarily deprive the owner of the possession. The third, entitled "Alternative C—theft with intent to permanently deprive," outlines the elements of vehicle theft under the statute, which requires an intent to permanently deprive the owner of a vehicle valued at more than $950. As *Page* points out, only a violation of Alternative C—the taking of a vehicle of sufficient worth with the intent to permanently deprive—can properly be characterized as theft, since the intent to permanently deprive is a necessary element of theft. According, Alternative B should read: "Alternative B—taking with the intent temporarily deprive" rather than "Alternative B—theft with intent to temporarily deprive."	
2361	Nikki Miliband, President of Orange County Bar Association	Element 5: delete "marijuana" and replace with "cannabis" for consistency with statute and rest of instruction.	The committee agrees with this comment and has made the suggested change.
3550	Hon. Kelvin Filer, Los Angeles County	I am a member of the Access and Fairness Committee of the Los Angeles Superior Court. One of our pending projects is to propose a new instruction for Cal Crim that explains the presence of implicit bias for our jurors. I have attached a copy of the proposed instruction.We are working with our representative on the Advisory Committee on Criminal Jury Instructions – Judge Lisa B. Lench – to possibly have the proposed CalCrim 101 considered at the next meeting ?	These comments raise issues outside the scope of the current invitation to comment. The committee will consider them at its next meeting**.**

Instruction	Commentator	Comment	Response
		However, as I read the proposed revisions to Cal Crim 3550, it occurred to me that the language, admonishments and concerns about bias might bear repeating in the concluding instruction that we give to our jurors, to wit, Cal Crim 3550? Ergo, this email is being submitted by me as an individual judge as a proposed revision to the current modification AND as a prelude to the committee's future consideration of a new instruction? I thank you for your time and attention.	
121	Olivia Johnston Court Interpreter, Riverside County	I would like to comment on the above. I have some real concerns for the BENCH, TRIALS, INTERPRETERS. I believe the above instruction should end with "Do not retranslate any testimony for other jurors." Thus, the last utterance of the paragraph, "If you believe the court interpreter translated testimony incorrectly, Let me know immediately by writing a note and giving it to the (clerk/bailiff)," **should be deleted.**	The committee does not currently have a proposed modification for this instruction. The committee will consider this comment at its next meeting.

CALCRIM - INVITATION TO COMMENT
MAY 22-JUNE 22, 2018

Instruction Number	Instruction Title
580	Involuntary Manslaughter
800	Aggravated Mayhem
1520	Attempted Arson
1600	Robbery
1820	Unlawful Taking or Driving of Vehicle
2181	Evading Peace Officer: Reckless Driving
2350, 2351, 2361, 2363	Marijuana instructions related to H&S 11360
NEW 2364	Felony Penalty Allegations for H&S 11360 offenses
2352	Possession of Marijuana for Sale (H&S 11359)
2370	Marijuana Cultivation (H&S 11358)
2375 & 2376	Simple Possession (H&S 11357)
NEW 3415	Lawful Use Defense (H&S 11362.1)
2330, 2384, 2390, 2391, 2392, 2393, 2410, 2748, 3403, 3406, 3412, 3413	~~Marijuana~~ Cannabis: nomenclature and clerical changes only
DELETED: 2360, 2362, 2377	Infractions after Prop 64
3550	Pre-Deliberation Instructions

580. Involuntary Manslaughter: Lesser Included Offense (Pen. Code, § 192(b))

When a person commits an unlawful killing but does not intend to kill and does not act with conscious disregard for human life, then the crime is involuntary manslaughter.

The difference between other homicide offenses and involuntary manslaughter depends on whether the person was aware of the risk to life that his or her actions created and consciously disregarded that risk. An unlawful killing caused by a willful act done with full knowledge and awareness that the person is endangering the life of another, and done in conscious disregard of that risk, is voluntary manslaughter or murder. An unlawful killing resulting from a willful act committed without intent to kill and without conscious disregard of the risk to human life is involuntary manslaughter.

The defendant committed involuntary manslaughter if:

1. **The defendant committed (a crime/ [or] a lawful act in an unlawful manner);**
2. **The defendant committed the (crime/ [or] act) with criminal negligence;**

AND

3. **The defendant's acts caused the death of another person.**

[The People allege that the defendant committed the following crime[s]: _____ <*insert misdemeanor[s]/infraction[s])/noninherently dangerous (felony/felonies)*>**.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ <*insert misdemeanor[s]/infraction[s])/ noninherently dangerous (felony/felonies)*>**.]**

[The People [also] allege that the defendant committed the following lawful act[s] with criminal negligence: _____ <*insert act[s] alleged*>**.]**

***Criminal negligence* involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

***Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.**

[The People allege that the defendant committed the following (crime[s]/ [and] lawful act[s] with criminal negligence): _____ *<insert alleged predicate acts when multiple acts alleged>***. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged acts and you all agree that the same act or acts were proved.]**

In order to prove murder or voluntary manslaughter, the People have the burden of proving beyond a reasonable doubt that the defendant acted with intent to kill or with conscious disregard for human life. If the People have not met either of these burdens, you must find the defendant not guilty of murder and not guilty of voluntary manslaughter.

New January 2006; Revised April 2011, February 2013, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on involuntary manslaughter as a lesser included offense of murder when there is sufficient evidence that the defendant lacked malice. (*People v. Glenn* (1991) 229 Cal.App.3d 1461, 1465–1467 [280 Cal.Rptr. 609], overruled in part in *People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675].)

When instructing on involuntary manslaughter as a lesser offense, the court has a **sua sponte** duty to instruct on both theories of involuntary manslaughter (misdemeanor/infraction/noninherently dangerous felony and lawful act committed without due caution and circumspection) if both theories are supported by the evidence. (*People v. Lee* (1999) 20 Cal.4th 47, 61 [82 Cal.Rptr.2d 625, 971 P.2d 1001].) In element 2, instruct on either or both of theories of involuntary manslaughter as appropriate.

The court has a **sua sponte** duty to specify the predicate misdemeanor, infraction or noninherently dangerous felony alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409]; *People v. Burroughs* (1984) 35 Cal.3d 824, 835 [201 Cal.Rptr. 319, 678 P.2d 894], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451, 999 P.2d 675].)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr.2d 54].) See also CALCRIM No. 620, *Causation: Special Issues*.

In cases involving vehicular manslaughter (Pen. Code, § 192(c)), there is a split in authority on whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].) A unanimity instruction is

included in a bracketed paragraph, should the court determine that such an instruction is appropriate.

AUTHORITY

- Involuntary Manslaughter Defined ▸ Pen. Code, § 192(b).
- Due Caution and Circumspection ▸ *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Criminal Negligence Requirement; This Instruction Upheld ▸ *People v. Butler* (2010) 187 Cal.App.4th 998, 1014 [114 Cal.Rptr.3d 696].
- Unlawful Act Not Amounting to a Felony ▸ *People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].
- Unlawful Act Must Be Dangerous Under the Circumstances of Its Commission ▸ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374]; *People v. Cox* (2000) 23 Cal.4th 665, 674 [97 Cal.Rptr.2d 647, 2 P.3d 1189].
- Proximate Cause ▸ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Lack of Due Caution and Circumspection Contrasted With Conscious Disregard of Life ▸ *People v. Watson* (1981) 30 Cal.3d 290, 296–297 [179 Cal.Rptr. 43, 637 P.2d 279]; *People v. Evers* (1992) 10 Cal.App.4th 588, 596 [12 Cal.Rptr.2d 637].
- Inherently Dangerous Assaultive Felonies ▸ *People v. Bryant* (2013) 56 Cal.4th 959, 964 [157 Cal.Rptr.3d 522, 301 P.3d 1136]; *People v. Brothers* (2015) 236 Cal.App.4th 24, 33-34 [186 Cal.Rptr.3d 98].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 220–234.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, §§ 140.02[4], 140.04, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][d.1], [e], 142.02[1][a], [b], [e], [f], [2][b], [3][c] (Matthew Bender).

LESSER INCLUDED OFFENSES

Involuntary manslaughter is a lesser included offense of both degrees of murder, but it is not a lesser included offense of voluntary manslaughter. (*People v. Orr* (1994) 22 Cal.App.4th 780, 784 [27 Cal.Rptr.2d 553].)

There is no crime of attempted involuntary manslaughter. (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798]; *People v. Broussard* (1977) 76 Cal.App.3d 193, 197 [142 Cal.Rptr. 664].)

Aggravated assault is not a lesser included offense of involuntary manslaughter. (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140 [84 Cal.Rptr.3d 676].)

RELATED ISSUES

Imperfect Self-Defense and Involuntary Manslaughter

Imperfect self-defense is a "mitigating circumstance" that "reduce[s] an intentional, unlawful killing from murder to voluntary manslaughter by *negating the element of malice* that otherwise inheres in such a homicide." (*People v. Rios* (2000) 23 Cal.4th 450, 461 [97 Cal.Rptr.2d 512, 2 P.3d 1066] [citations omitted, emphasis in original].) However, evidence of imperfect self-defense may support a finding of *involuntary* manslaughter, where the evidence demonstrates *the absence of* (as opposed to *the negation of*) the elements of malice. (*People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675] [discussing dissenting opinion of Mosk, J.].) Nevertheless, a court should not instruct on involuntary manslaughter unless there is evidence supporting the statutory elements of that crime.

See also the Related Issues section to CALCRIM No. 581, *Involuntary Manslaughter: Murder Not Charged*.

800. Aggravated Mayhem (Pen. Code, § 205)

The defendant is charged [in Count __] with aggravated mayhem [in violation of Penal Code section 205].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant unlawfully and maliciously (disabled or disfigured someone permanently/ [or] deprived someone else of a limb, organ, or part of (his/her) body);**

2. **When the defendant acted, (he/she) intended to (permanently disable or disfigure the other person/ [or] deprive the other person of a limb, organ, or part of (his/her) body);**

AND

3. **Under the circumstances, the defendant's act showed extreme indifference to the physical or psychological well-being of the other person.**

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else.

[A disfiguring injury may be *permanent* even if it can be repaired by medical procedures.]

[The People do not have to prove that the defendant intended to kill.]

New January 2006; Revised August 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 1, give the first option if the defendant was prosecuted for permanently disabling or disfiguring the victim. Give the second option if the defendant was

prosecuted for depriving someone of a limb, organ, or body part. (See Pen. Code, § 205.)

The bracketed sentence regarding "permanent injury" may be given on request if there is evidence that the injury may be repaired by medical procedures. (*People v. Hill* (1994) 23 Cal.App.4th 1566, 1574–1575 [28 Cal.Rptr.2d 783] [not error to instruct that an injury may be permanent even though cosmetic repair may be medically feasible].)

The bracketed sentence stating that "The People do not have to prove that the defendant intended to kill," may be given on request if there is no evidence or conflicting evidence that the defendant intended to kill someone. (See Pen. Code, § 205.)

AUTHORITY

- Elements ▸ Pen. Code, § 205.
- Malicious Defined ▸ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- Permanent Disability ▸ See, e.g., *People v. Thomas* (1979) 96 Cal.App.3d 507, 512 [158 Cal.Rptr. 120] [serious ankle injury lasting over six months], overruled on other grounds *People v. Kimble* (1988) 44 Cal.3d 480, 498 [244 Cal.Rptr. 148, 749 P.2d 803].
- Permanent Disfigurement ▸ See *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571 [28 Cal.Rptr.2d 783]; see also *People v. Newble* (1981) 120 Cal.App.3d 444, 451 [174 Cal.Rptr. 637] [head is member of body for purposes of disfigurement].
- Specific Intent to Cause Maiming Injury ▸ *People v. Ferrell* (1990) 218 Cal.App.3d 828, 833 [267 Cal.Rptr. 283]; *People v. Lee* (1990) 220 Cal.App.3d 320, 324–325 [269 Cal.Rptr. 434].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person §§ 89-91.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.16[2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Simple Mayhem ▸ *People v. Robinson* (2014) 232 Cal.App.4th 69, 77-80 [180 Cal.Rptr.3d 796].
- Attempted Aggravated Mayhem ▸ Pen. Code, §§ 205, 663.
- Assault ▸ Pen. Code, § 240.
- ~~Battery with Serious Bodily Injury ▸ Pen. Code, § 243(d); *People v. Ausbie* (2004) 123 Cal.App.4th 855 [20 Cal.Rptr.3d 371].~~
- Battery ▸ Pen. Code, § 242.

Assault with force likely to produce great bodily injury (Pen. Code, § 245(a)(1)) is not a lesser included offense to mayhem. (*People v. Ausbie* (2004) 123 Cal.App.4th 855, 862-863 [20 Cal.Rptr.3d 371].

RELATED ISSUES

Victim Must Be Alive

A victim of mayhem must be alive at the time of the act. (*People v. Kraft* (2000) 23 Cal.4th 978, 1058 [99 Cal.Rptr.2d 1, 5 P.3d 68]; see *People v. Jentry* (1977) 69 Cal.App.3d 615, 629 [138 Cal.Rptr. 250].)

Evidence of Indiscriminate Attack or Actual Injury Constituting Mayhem Insufficient to Show Specific Intent

"Aggravated mayhem . . . requires the specific intent to cause the maiming injury. [Citation.] Evidence that shows no more than an 'indiscriminate attack' is insufficient to prove the required specific intent. [Citation.] Furthermore, specific intent to maim may not be inferred solely from evidence that the injury inflicted actually constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately. [Citation.]" (*People v. Park* (2000) 112 Cal.App.4th 61, 64 [4 Cal.Rptr.3d 815].)

1520. Attempted Arson (Pen. Code, § 455)

The defendant is charged [in Count __] with the crime of attempted arson [in violation of Penal Code section 455].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant attempted to set fire to or burn [or counseled, helped, or caused the attempted burning of] (a structure/forest land/property);**

AND

2. **(He/She) acted willfully and maliciously.**

A person *attempts to set fire to or burn* (a structure/forest land/property) when he or she places any flammable, explosive, or combustible material or device in or around it with the intent to set fire to it.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.

[A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent).]

[*Forest land* is any brush-covered land, cut-over land, forest, grasslands, or woods.]

[*Property* means personal property or land other than forest land.]

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. Attempted arson is governed by Penal Code section 455, not the general attempt statute found in section 664. (*People v. Alberts* (1995) 32 Cal.App.4th 1424, 1427–1428 [37 Cal.Rptr.2d 401] [defendant was convicted under §§ 451 and 664; the higher sentence was reversed because § 455 governs attempted arson].)

AUTHORITY

- Elements ▸ Pen. Code, § 455.
- Structure, Forest Land, and Maliciously Defined ▸ Pen. Code, § 450.
- This Instruction Upheld ▸ *People v. Rubino* (2017) 18 Cal.App.5th 407, 412-413 [227 Cal.Rptr.3d 75].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 238–242.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1521–1529. Reserved for Future Use

1600. Robbery (Pen. Code, § 211)

The defendant is charged [in Count _____] with robbery [in violation of Penal Code section 211].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant took property that was not (his/her) own;**

2. **The property was in the possession of another person;**

3. **The property was taken from the other person or (his/her) immediate presence;**

4. **The property was taken against that person's will;**

5. **The defendant used force or fear to take the property or to prevent the person from resisting;**

AND

6. **When the defendant used force or fear, (he/she) intended (to deprive the owner of the property permanently/ [or] to remove the property from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property).**

The defendant's intent to take the property must have been formed before or during the time (he/she) used force or fear. If the defendant did not form this required intent until after using the force or fear, then (he/she) did not commit robbery.

<Give the following bracketed paragraph if the second degree is the only possible degree of the charged crime for which the jury may return a verdict.>

[If you find the defendant guilty of robbery, it is robbery of the second degree.]

[A person *takes* something when he or she gains possession of it and moves it some distance. The distance moved may be short.]

[The property taken can be of any value, however slight.] [Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[A (store/ [or] business) (employee/ _____ *<insert description>***) who is on duty has possession of the (store/ [or] business) owner's property.]**

[*Fear*, as used here, means fear of (injury to the person himself or herself[,]/ [or] injury to the person's family or property[,]/ [or] immediate injury to someone else present during the incident or to that person's property).]

[Property is within a person's *immediate presence* if it is sufficiently within his or her physical control that he or she could keep possession of it if not prevented by force or fear.]

[An act is done *against a person's will* if that person does not consent to the act. In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

New January 2006; Revised August 2009, October 2010, April 2011, August 2013, August 2014, March 2017, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

To have the requisite intent for theft, the defendant must either intend to deprive the owner permanently or to deprive the owner of a major portion of the property's value or enjoyment. (See *People v. Avery* (2002) 27 Cal.4th 49, 57–58 [115 Cal.Rptr.2d 403, 38 P.3d 1].) Select the appropriate language in element 5.

There is no sua sponte duty to define the terms "possession," "fear," and "immediate presence." (*People v. Anderson* (1966) 64 Cal.2d 633, 639 [51 Cal.Rptr. 238, 414 P.2d 366] [fear]; *People v. Mungia* (1991) 234 Cal.App.3d

1703, 1708 [286 Cal.Rptr. 394] [fear].) These definitions are discussed in the Commentary below.

If second degree robbery is the only possible degree of robbery that the jury may return as their verdict, do not give CALCRIM No. 1602, *Robbery: Degrees*.

Give the bracketed definition of "against a person's will" on request.

If there is an issue as to whether the defendant used force or fear during the commission of the robbery, the court may need to instruct on this point. (See *People v. Estes* (1983) 147 Cal.App.3d 23, 28 [194 Cal.Rptr. 909].) See CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*.

AUTHORITY

- Elements. ▸ Pen. Code, § 211.
- Fear Defined. ▸ Pen. Code, § 212; see *People v. Cuevas* (2001) 89 Cal.App.4th 689, 698 [107 Cal.Rptr.2d 529] [victim must actually be afraid].
- Immediate Presence Defined. ▸ *People v. Hayes* (1990) 52 Cal.3d 577, 626–627 [276 Cal.Rptr. 874, 802 P.2d 376].
- Intent. ▸ *People v. Green* (1980) 27 Cal.3d 1, 52–53 [164 Cal.Rptr. 1, 609 P.2d 468], overruled on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99]; see *Rodriguez v. Superior Court* (1984) 159 Cal.App.3d 821, 826 [205 Cal.Rptr. 750] [same intent as theft].
- Intent to Deprive Owner of Main Value. ▸ See *People v. Avery* (2002) 27 Cal.4th 49, 57–58 [115 Cal.Rptr.2d 403, 38 P.3d 1] [in context of theft]; *People v. Zangari* (2001) 89 Cal.App.4th 1436, 1447 [108 Cal.Rptr.2d 250] [same].
- Possession Defined. ▸ *People v. Bekele* (1995) 33 Cal.App.4th 1457, 1461 [39 Cal.Rptr.2d 797], disapproved on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13–14 [82 Cal.Rptr.2d 413, 971 P.2d 618].
- Constructive Possession by Employee. ▸ *People v. Scott* (2009) 45 Cal.4th 743, 751 [89 Cal.Rptr.3d 213, 200 P.3d 837].
- Constructive Possession by Subcontractor/Janitor. ▸ *People v. Gilbeaux* (2003) 111 Cal.App.4th 515, 523 [3 Cal.Rptr.3d 835].
- Constructive Possession by Person With Special Relationship. ▸ *People v. Weddles* (2010) 184 Cal.App.4th 1365, 1369-1370 [109 Cal.Rptr.3d 479].

- Felonious Taking Not Satisfied by Theft by False Pretense. ‣ *People v. Williams* (2013) 57 Cal.4th 776, 784-789 [161 Cal.Rptr.3d 81, 305 P.3d 1241].
- Constructive Possession and Immediate Presence of Funds in Account of Robbery Victims Using ATM ‣ *People v. Mullins* (2018) 19 Cal.App.5th 594, 603 [228 Cal.Rptr.3d 198].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 85.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.10 (Matthew Bender).

COMMENTARY

The instruction includes definitions of "possession," "fear," and "immediate presence" because those terms have meanings in the context of robbery that are technical and may not be readily apparent to jurors. (See *People v. McElheny* (1982) 137 Cal.App.3d 396, 403 [187 Cal.Rptr. 39]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221].)

Possession was defined in the instruction because either actual or constructive possession of property will satisfy this element, and this definition may not be readily apparent to jurors. (*People v. Bekele* (1995) 33 Cal.App.4th 1457, 1461 [39 Cal.Rptr.2d 797] [defining possession], disapproved on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13–14 [82 Cal.Rptr.2d 413, 971 P.2d 618]; see also *People v. Nguyen* (2000) 24 Cal.4th 756, 761, 763 [102 Cal.Rptr.2d 548, 14 P.3d 221] [robbery victim must have actual or constructive possession of property taken; disapproving *People v. Mai* (1994) 22 Cal.App.4th 117, 129 [27 Cal.Rptr.2d 141]].)

Fear was defined in the instruction because the statutory definition includes fear of injury to third parties, and this concept is not encompassed within the common understanding of fear. Force was not defined because its definition in the context of robbery is commonly understood. (See *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709 [286 Cal.Rptr. 394] ["force is a factual question to be determined by the jury using its own common sense"].)

Immediate presence was defined in the instruction because its definition is related to the use of force and fear and to the victim's ability to control the property. This

definition may not be readily apparent to jurors.

LESSER INCLUDED OFFENSES

- Attempted Robbery. ‣ Pen. Code, §§ 664, 211; *People v. Webster* (1991) 54 Cal.3d 411, 443 [285 Cal.Rptr. 31, 814 P.2d 1273].
- Grand Theft. ‣ Pen. Code, §§ 484, 487g; *People v. Webster, supra*, at p. 443; *People v. Ortega* (1998) 19 Cal.4th 686, 694, 699 [80 Cal.Rptr.2d 489, 968 P.2d 48]; see *People v. Cooksey* (2002) 95 Cal.App.4th 1407, 1411–1413 [116 Cal.Rptr.2d 1] [insufficient evidence to require instruction].
- Grand Theft Automobile. ‣ Pen. Code, § 487(d); *People v. Gamble* (1994) 22 Cal.App.4th 446, 450 [27 Cal.Rptr.2d 451] [construing former Pen. Code, § 487h]; *People v. Escobar* (1996) 45 Cal.App.4th 477, 482 [53 Cal.Rptr.2d 9] [same].
- Petty Theft. ‣ Pen. Code, §§ 484, 488; *People v. Covington* (1934) 1 Cal.2d 316, 320 [34 P.2d 1019].
- Petty Theft With Prior. ‣ Pen. Code, § 666; *People v. Villa* (2007) 157 Cal.App.4th 1429, 1433–1434 [69 Cal.Rptr.3d 282].

When there is evidence that the defendant formed the intent to steal after the application of force or fear, the court has a **sua sponte** duty to instruct on any relevant lesser included offenses. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1055–1057 [60 Cal.Rptr.2d 225, 929 P.2d 544] [error not to instruct on lesser included offense of theft]); *People v. Ramkeesoon* (1985) 39 Cal.3d 346, 350–352 [216 Cal.Rptr. 455, 702 P.2d 613] [same].)

On occasion, robbery and false imprisonment may share some elements (e.g., the use of force or fear of harm to commit the offense). Nevertheless, false imprisonment is not a lesser included offense, and thus the same conduct can result in convictions for both offenses. (*People v. Reed* (2000) 78 Cal.App.4th 274, 281–282 [92 Cal.Rptr.2d 781].)

RELATED ISSUES

Asportation—Felonious Taking

To constitute a taking, the property need only be moved a small distance. It does not have to be under the robber's actual physical control. If a person acting under the robber's direction, including the victim, moves the property, the element of taking is satisfied. (*People v. Martinez* (1969) 274 Cal.App.2d 170, 174 [79 Cal.Rptr. 18]; *People v. Price* (1972) 25 Cal.App.3d 576, 578 [102 Cal.Rptr. 71].)

Claim of Right

If a person honestly believes that he or she has a right to the property even if that belief is mistaken or unreasonable, such belief is a defense to robbery. (*People v. Butler* (1967) 65 Cal.2d 569, 573 [55 Cal.Rptr. 511, 421 P.2d 703]; *People v. Romo* (1990) 220 Cal.App.3d 514, 518 [269 Cal.Rptr. 440] [discussing defense in context of theft]; see CALCRIM No. 1863, *Defense to Theft or Robbery: Claim of Right*.) This defense is only available for robberies when a specific piece of property is reclaimed; it is not a defense to robberies perpetrated to settle a debt, liquidated or unliquidated. (*People v. Tufunga* (1999) 21 Cal.4th 935, 945–950 [90 Cal.Rptr.2d 143, 987 P.2d 168].)

Fear

A victim's fear may be shown by circumstantial evidence. (*People v. Davison* (1995) 32 Cal.App.4th 206, 212 [38 Cal.Rptr.2d 438].) Even when the victim testifies that he or she is not afraid, circumstantial evidence may satisfy the element of fear. (*People v. Renteria* (1964) 61 Cal.2d 497, 498–499 [39 Cal.Rptr. 213, 393 P.2d 413].)

Force—Amount

The force required for robbery must be more than the incidental touching necessary to take the property. (*People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246 [53 Cal.Rptr.2d 256] [noting that force employed by pickpocket would be insufficient], disapproved on other grounds in *People v. Mosby* (2004) 33 Cal.4th 353, 365, fns. 2, 3 [15 Cal.Rptr.3d 262, 92 P.3d 841].) Administering an intoxicating substance or poison to the victim in order to take property constitutes force. (*People v. Dreas* (1984) 153 Cal.App.3d 623, 628–629 [200 Cal.Rptr. 586]; see also *People v. Wright* (1996) 52 Cal.App.4th 203, 209–210 [59 Cal.Rptr.2d 316] [explaining force for purposes of robbery and contrasting it with force required for assault].)

Force—When Applied

The application of force or fear may be used when taking the property or when carrying it away. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1165, fn. 8 [282 Cal.Rptr. 450, 811 P.2d 742]; *People v. Pham* (1993) 15 Cal.App.4th 61, 65–67 [18 Cal.Rptr.2d 636]; *People v. Estes* (1983) 147 Cal.App.3d 23, 27–28 [194 Cal.Rptr. 909].)

Immediate Presence

Property that is 80 feet away or around the corner of the same block from a forcibly held victim is not too far away, as a matter of law, to be outside the victim's immediate presence. (*People v. Harris* (1994) 9 Cal.4th 407, 415–419 [37 Cal.Rptr.2d 200, 886 P.2d 1193]; see also *People v. Prieto* (1993) 15 Cal.App.4th

210, 214 [18 Cal.Rptr.2d 761] [reviewing cases where victim is distance away from property taken].) Property has been found to be within a person's immediate presence when the victim is lured away from his or her property and force is subsequently used to accomplish the theft or escape (*People v. Webster* (1991) 54 Cal.3d 411, 440–442 [285 Cal.Rptr. 31, 814 P.2d 1273]) or when the victim abandons the property out of fear (*People v. Dominguez* (1992) 11 Cal.App.4th 1342, 1348–1349 [15 Cal.Rptr.2d 46].)

Multiple Victims

Multiple counts of robbery are permissible when there are multiple victims even if only one taking occurred. (*People v. Ramos* (1982) 30 Cal.3d 553, 589 [180 Cal.Rptr. 266, 639 P.2d 908], reversed on other grounds *California v. Ramos* (1983) 463 U.S. 992 [103 S.Ct. 3446, 77 L.Ed.2d 1171]; *People v. Miles* (1996) 43 Cal.App.4th 364, 369, fn. 5 [51 Cal.Rptr.2d 87] [multiple punishment permitted].) Conversely, a defendant commits only one robbery, no matter how many items are taken from a single victim pursuant to a single plan. (*People v. Brito* (1991) 232 Cal.App.3d 316, 325–326, fn. 8 [283 Cal.Rptr. 441].)

Value

The property taken can be of small or minimal value. (*People v. Simmons* (1946) 28 Cal.2d 699, 705 [172 P.2d 18]; *People v. Thomas* (1941) 45 Cal.App.2d 128, 134–135 [113 P.2d 706].) The property does not have to be taken for material gain. All that is necessary is that the defendant intended to permanently deprive the person of the property. (*People v. Green* (1980) 27 Cal.3d 1, 57 [164 Cal.Rptr. 1, 609 P.2d 468], disapproved on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99].)

1820. Felony Unlawful Taking or Driving of Vehicle (Veh. Code, § 10851(a), (b))

The defendant is charged [in Count __] with unlawfully taking or driving a vehicle [in violation of Vehicle Code section 10851].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative A—joyriding>

[1. The defendant ~~took or~~ drove someone else's vehicle without the owner's consent;

AND

2. When the defendant drove the vehicle ~~did so~~, (he/she) intended to deprive the owner of possession or ownership of the vehicle for any period of time(;/.)]

[OR]

<Alternative B—taking with intent to temporarily deprive>

[1. The defendant took someone else's vehicle without the owner's consent;

AND

2. When the defendant took the vehicle, (he/she) intended to temporarily deprive the owner of possession or ownership of the vehicle(;/.)]

[OR]

<Alternative C—theft with intent to permanently deprive>

[1. The defendant took someone else's vehicle without the owner's consent;

2. When the defendant took the vehicle, (he/she) intended to permanently deprive the owner of possession or ownership of the vehicle;

AND

3. The vehicle was worth more than $950.]

[Even if you conclude that the owner had allowed the defendant or someone else to take or drive the vehicle before, you may not conclude that the owner consented to the driving or taking on _____<*insert date of alleged crime*> **based on that previous consent alone.]**

[A *taking* requires that the vehicle be moved for any distance, no matter how small.]

[A *vehicle* includes a (passenger vehicle/motorcycle/motor scooter/bus/schoolbus/commercial vehicle/truck tractor/ [and] trailer/ [and] semitrailer/_____ <*insert other type of vehicle*>**.]**

<*Sentencing Factor: Ambulance, Police Vehicle, Fire Dept. Vehicle*>
[If you find the defendant guilty of unlawfully taking or driving a vehicle, you must then decide whether the People have proved the additional allegation that the defendant took or drove an emergency vehicle on call. To prove this allegation, the People must prove that:

1. **The vehicle was (an ambulance/a distinctively marked law enforcement vehicle/a distinctively marked fire department vehicle);**

2. **The vehicle was on an emergency call when it was taken;**

AND

3. **The defendant knew that the vehicle was on an emergency call.**

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

<*Sentencing Factor: Modified for Disabled Person*>
[If you find the defendant guilty of unlawfully taking or driving a vehicle, you must then decide whether the People have proved the additional allegation

that the defendant took or drove a vehicle modified for a disabled person. To prove this allegation, the People must prove that:

1. **The vehicle was modified for the use of a disabled person;**

2. **The vehicle displayed a distinguishing license plate or placard issued to disabled persons;**

AND

3. **The defendant knew or reasonably should have known that the vehicle was so modified and displayed the distinguishing plate or placard.**

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges that the vehicle was an emergency vehicle or was modified for a disabled person, the court has a **sua sponte** duty to instruct on the sentencing factor. (Veh. Code, § 10851(b); see Veh. Code, § 10851(d) [fact issues for jury].)

If the defendant is charged with unlawfully driving or taking an automobile and with receiving the vehicle as stolen property, and there is evidence of only one act or transaction, the trial court has a **sua sponte** duty to instruct the jury that the defendant cannot be convicted of both stealing the vehicle and receiving a stolen vehicle. (*People v. Black* (1990) 222 Cal.App.3d 523, 525 [271 Cal.Rptr. 771]; *People v. Strong* (1994) 30 Cal.App.4th 366, 376 [35 Cal.Rptr.2d 494].) In such cases, give CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited.*

Similarly, a defendant cannot be convicted of grand theft of a vehicle and unlawfully taking the vehicle in the absence of any evidence showing a substantial break between the taking and the use of the vehicle. (*People v. Kehoe* (1949) 33

Cal.2d 711, 715 [204 P.2d 321]; see *People v. Malamut* (1971) 16 Cal.App.3d 237, 242 [93 Cal.Rptr. 782] [finding substantial lapse between theft and driving].) In such cases, give CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.

The bracketed paragraph that begins with "Even if you conclude that" may be given on request if there is evidence that the owner of the vehicle previously agreed to let the defendant or another person drive or take the vehicle. (Veh. Code, § 10851(c).)

The bracketed sentence defining "taking" may be given on request if there is a question whether a vehicle that was taken was moved any distance. (*People v. White* (1945) 71 Cal.App.2d 524, 525 [162 P.2d 862].)

The definition of "vehicle" may be given on request. (See Veh. Code, § 670 ["vehicle" defined].)

AUTHORITY

- Elements ▸ Veh. Code, § 10851(a), (b); *De Mond v. Superior Court* (1962) 57 Cal.2d 340, 344 [368 P.2d 865].
- Ambulance Defined ▸ Veh. Code, § 165(a).
- Owner Defined ▸ Veh. Code, § 460.
- Application to Trolley Coaches ▸ Veh. Code, § 21051.
- Expiration of Owner's Consent to Drive ▸ *People v. Hutchings* (1966) 242 Cal.App.2d 294, 295 [51 Cal.Rptr. 415].
- Taking Defined ▸ *People v. White* (1945) 71 Cal.App.2d 524, 525 [162 P.2d 862] [any removal, however slight, constitutes taking]; *People v. Frye* (1994) 28 Cal.App.4th 1080, 1088 [34 Cal.Rptr.2d 180] [taking is limited to removing vehicle from owner's possession].
- Vehicle Value Must Exceed $950 for Felony Taking With Intent to Permanently Deprive ▸ *People v. Page* (2017) 3 Cal.5th 1175, 1183-1187 [225 Cal.Rptr.3d 786, 406 P.3d 319].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 66–71.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.10A, Ch. 143, *Crimes Against Property*, § 143.01[1][j], [2][c], [4][c] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Unlawful Driving or Taking of Vehicle ▸ Pen. Code, § 664; Veh. Code, § 10851(a), (b).

RELATED ISSUES

Other Modes of Transportation

The "joyriding" statute, Penal Code section 499b, now only prohibits the unlawful taking of bicycles, motorboats, or vessels. The unlawful taking or operation of an aircraft is a felony, as prohibited by Penal Code section 499d.

Community Property

A spouse who takes a community property vehicle with the intent to temporarily, not permanently, deprive the other spouse of its use is not guilty of violating Vehicle Code section 10851. (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1739–1740 [60 Cal.Rptr.2d 357].)

Consent Not Vitiated by Fraud

The fact that an owner's consent was obtained by fraud or misrepresentation does not supply the element of nonconsent. (*People v. Cook* (1964) 228 Cal.App.2d 716, 719 [39 Cal.Rptr. 802].)

Theft-Related Convictions

A person cannot be convicted of taking a vehicle and receiving it as stolen property unless the jury finds that the defendant unlawfully drove the vehicle, as opposed to unlawfully taking it, and there is other evidence that establishes the elements of receiving stolen property. (*People v. Jaramillo* (1976) 16 Cal.3d 752, 757–759 [129 Cal.Rptr. 306, 548 P.2d 706]; *People v. Cratty* (1999) 77 Cal.App.4th 98, 102–103 [91 Cal.Rptr.2d 370]; *People v. Strong* (1994) 30 Cal.App.4th 366, 372–374 [35 Cal.Rptr.2d 494].)

2181. Evading Peace Officer~~: Reckless Driving~~ (Veh. Code, §§ 2800.1(a), 2800.2)

The defendant is charged [in Count __] with evading a peace officer ~~[with wanton disregard for safety]~~ [in violation of Vehicle Code section[s] (2800.1(a)/ ~~and~~ [or] 2800.2)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **A peace officer driving a motor vehicle was pursuing the defendant;**

2. **The defendant, who was also driving a motor vehicle, willfully fled from, or tried to elude, the officer, intending to evade the officer(./;)**

<Give the appropriate paragraph[s] of element 3 when the defendant is charged with a violation of Vehicle Code section 2800.2>

[3A. During the pursuit, the defendant drove with willful or wanton disregard for the safety of persons or property;]

[OR]

[3B. During the pursuit, the defendant caused damage to property while driving;]

[OR]

[3C. During the pursuit, the defendant committed three or more violations, each of which would make the defendant eligible for a traffic violation point;]

AND

4. **All of the following were true:**

   a. **There was at least one lighted red lamp visible from the front of the peace officer's vehicle;**

   b. **The defendant either saw or reasonably should have seen the lamp;**

c. The peace officer's vehicle was sounding a siren as reasonably necessary;

d. The peace officer's vehicle was distinctively marked;

AND

e. The peace officer was wearing a distinctive uniform.

[A person employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a *peace officer*.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a *peace officer* if** _____ *<insert description of facts necessary to make employee a peace officer, e.g., "designated by the director of the agency as a peace officer">*.**]**

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[A person acts with *wanton disregard for safety* when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk of harm, (2) and he or she intentionally ignores that risk. The person does not, however, have to intend to cause damage.]

~~**[*Driving with willful or wanton disregard for the safety of persons or property* includes, but is not limited to, causing damage to property while driving or committing three or more violations that are each assigned a traffic violation point.]**~~

[_____ *<insert traffic violations alleged>* **are each assigned a traffic violation point.]**

A vehicle is *distinctively marked* if it has features that are reasonably noticeable to other drivers, including a red lamp, siren, and at least one other feature that makes it look different from vehicles that are not used for law enforcement purposes.

A *distinctive uniform* means clothing adopted by a law enforcement agency to identify or distinguish members of its force. The uniform does not have to be

complete or of any particular level of formality. However, a badge, without more, is not enough.

New January 2006; Revised August 2006, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The jury must determine whether a peace officer was pursuing the defendant. (*People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].) The court must instruct the jury in the appropriate definition of "peace officer" from the statute. *(Ibid.)* It is an error for the court to instruct that the witness is a peace officer as a matter of law. (*Ibid.* [instruction that "Officer Bridgeman and Officer Gurney are peace officers" was error].) If the witness is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the witness is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

~~Give the bracketed definition of "driving with willful or wanton disregard" if there is evidence that the defendant committed three or more traffic violations. The court may also, at its discretion, give the bracketed sentence that follows this definition, inserting the names of the traffic violations alleged.~~

On request, the court must give CALCRIM No. 3426, *Voluntary Intoxication*, if there is sufficient evidence of voluntary intoxication to negate the intent to evade. (*People v. Finney* (1980) 110 Cal.App.3d 705, 712 [168 Cal.Rptr. 80].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

AUTHORITY

- Elements ▸ Veh. Code, §§ 2800.1(a), 2800.2.
- Willful or Wanton Disregard ▸ *People v. Schumacher* (1961) 194 Cal.App.2d 335, 339–340 [14 Cal.Rptr. 924].
- Three Violations or Property Damage as Wanton Disregard—Definitional ▸ *People v. Taylor* (2018) 19 Cal.App.5th 1195, 1202-1203 [228 Cal.Rptr.3d 575].

- *People v. Pinkston* (2003) 112 Cal.App.4th 387, 392–393 [5 Cal.Rptr.3d 274].
- Distinctively Marked Vehicle ‣ *People v. Hudson* (2006) 38 Cal.4th 1002, 1010–1011 [44 Cal.Rptr.3d 632, 136 P.3d 168].
- Distinctive Uniform ‣ *People v. Estrella* (1995) 31 Cal.App.4th 716, 724 [37 Cal.Rptr.2d 383]; *People v. Mathews* (1998) 64 Cal.App.4th 485, 491 [75 Cal.Rptr.2d 289].
- Jury Must Determine ~~If~~ Status as Peace Officers ~~s~~ ‣ *People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].
- Red Lamp, Siren, Additional Distinctive Feature of Car, and Distinctive Uniform Must Be Proved ‣ *People v. Hudson* (2006) 38 Cal.4th 1002, 1013 [44 Cal.Rptr.3d 632, 136 P.3d 168]; *People v. Acevedo* (2003) 105 Cal.App.4th 195, 199 [129 Cal.Rptr.2d 270]; *People v. Brown* (1989) 216 Cal.App.3d 596, 599–600 [264 Cal.Rptr. 906].
- Defendant Need Not Receive Violation Points for Conduct ‣ *People v. Leonard* (2017) 15 Cal.App.5th 275, 281 [222 Cal.Rptr3d 868].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 260.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.22[1][a][iv] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[2][b][ii][B], 142.02[2][c] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Misdemeanor Evading a Pursuing Peace Officer ‣ Veh. Code, § 2800.1; *People v. Springfield* (1993) 13 Cal.App.4th 1674, 1680–1681 [17 Cal.Rptr.2d 278].
- Failure to Yield ‣ Veh. Code, § 21806; *People v. Diaz* (2005) 125 Cal.App.4th 1484, 1491 [23 Cal.Rptr.3d 653]. (Lesser included offenses may not be used for the requisite "three or more violations.")

RELATED ISSUES

Inherently Dangerous Felony

A violation of Vehicle Code section 2800.2 is not an inherently dangerous felony supporting a felony murder conviction. (*People v. Howard* (2005) 34 Cal.4th 1129, 1139 [23 Cal.Rptr.3d 306, 104 P.3d 107].)

See the Related Issues section to CALCRIM No. 2182, *Evading Peace Officer: Misdemeanor*.

2350. Sale, Furnishing, Administering or Importingetc., of MarijuanaCannabis (Health & Saf. Code, § 11360(a))

The defendant is charged [in Count ___] with [unlawfully] (selling[,]/[or] furnishing[,]/ [or] administering/importing) , marijuanacannabis, a controlled substance [in violation of Health and Safety Code section 11360(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (sold[,]/ [or] furnished[,]/ [or] administered[,]/ [or] imported into California) a controlled substance;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

[AND]

4. **The controlled substance was marijuanacannabis(;/.)**

<Give element 5 when instructing on usable amount; see Bench Notes.>

[AND

5. **The controlled substance was in a usable amount(./;)]**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant (sold[,]/ [or] furnished[,]/ [or] administered[,]/ [or] imported into California) cannabis, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Selling* for the purpose of this instruction means exchanging the ~~marijuana~~cannabis for money, services, or anything of value.]

[A person *administers* a substance if he or she applies it directly to the body of another person by injection, or by any other means, or causes the other person to inhale, ingest, or otherwise consume the substance.]

[A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) (sold/furnished/administered/imported).]

[A person does not have to actually hold or touch something to (sell/furnish/administer/import) it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

New January 2006; Revised December 2008, October 2010, August 2014, February 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Sale of a controlled substance does not require a usable amount. (See *People v. Peregrina-Larios* (1994) 22 Cal.App.4th 1522, 1524 [28 Cal.Rptr.2d 316].) When the prosecution alleges sales, do not give element 5 or the bracketed definition of "usable amount." There is no case law on whether furnishing, administering, or importing require usable quantities. (See *People v. Emmal* (1998) 68 Cal.App.4th 1313, 1316 [80 Cal.Rptr.2d 907] [transportation requires usable quantity]; *People v. Ormiston* (2003) 105 Cal.App.4th 676, 682 [129 Cal.Rptr.2d 567] [same].) Element 5 and the definition of usable amount are provided for the court to use at its discretion.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

If any penalty allegations under Health & Safety Code section 11360(a)(3) are charged, give CALCRIM No. 2364, as appropriate.

Defenses—Instructional Duty

If a medical ~~marijuana~~cannabis defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request if supported by substantial evidence.

If ~~the medical marijuana instructions are given , then also give the bracketed word "unlawfully" in the first paragraph and element 1.~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360(a); *People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 906 [121 Cal.Rptr. 363].
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Selling ▸ *People v. Lazenby* (1992) 6 Cal.App.4th 1842, 1845 [8 Cal.Rptr.2d 541].
- Administering ▸ Health & Saf. Code, § 11002.
- Administering Does Not Include Self-Administering ▸ *People v. Label* (1974) 43 Cal.App.3d 766, 770–771 [119 Cal.Rptr. 522].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Usable Amount ▸ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Compassionate Use Defense Generally ▸ *People v. Wright* (2006) 40 Cal.4th 81 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 [33 Cal.Rptr.3d 859]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1165–1167 [128 Cal.Rptr.2d 844]; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389 [70 Cal.Rptr.2d 20].
- Medical Marijuana Program Act Defense ▸ *People v. Jackson (2012)* 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375]
- Definition of Cannabis ▸ Health & Saf. Code, §11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[c], [g]–[i], [3][a], [a.1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Simple Possession Is Not a Lesser Included Offense of This Crime. (*People v. Murphy* (2007) 154 Cal.App.4th 979, 983-984 [64 Cal.Rptr.3d 926]; *People v. Peregrina-Larios* (1994) 22 Cal.App.4th 1522, 1524 [28 Cal.Rptr.2d 316] [lesser related offense but not necessarily included].)
- Possession for Sale Is Not a Lesser Included Offense of This Crime. (*People v. Peregrina-Larios* (1994) 22 Cal.App.4th 1522, 1524 [28 Cal.Rptr.2d 316] [lesser related offense but not necessarily included].)

2351. Offering to Sell, Furnish, etc., ~~Marijuana~~Cannabis (Health & Saf. Code, § 11360)

The defendant is charged [in Count ___] with offering to ~~[unlawfully]~~ (sell[,]/ [or] furnish[,]/ [or] administer[,]/ [or] import) ~~marijuana~~ cannabis, a controlled substance [in violation of Health and Safety Code section 11360].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ offered to (sell[,]/ [or] furnish[,]/ [or] administer[,]/ [or] import into California) ~~marijuana~~cannabis, a controlled substance;**

   AND

2. **When the defendant made the offer, (he/she) intended to (sell[,]/ [or] furnish[,]/ [or] administer[,]/ [or] import) the controlled substance.**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant offered to (sell[,]/ [or] furnish[,]/ [or] administer[,]/ [or] import) cannabis, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Selling* for the purpose of this instruction means exchanging ~~marijuana~~cannabis for money, services, or anything of value.]

[A person *administers* a substance if he or she applies it directly to the body of another person by injection, or by any other means, or causes the other person to inhale, ingest, or otherwise consume the substance.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>

[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[The People do not need to prove that the defendant actually possessed the ~~marijuana~~cannabis.]

New January 2006; Revised December 2008, February 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

If any of the penalty allegations under Health & Safety Code section 11360(a)(3) are charged, give CALCRIM No. 2364, as appropriate.

Defenses – Instructional Duty

If a medical ~~marijuana~~ cannabis defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request if supported by substantial evidence.

If ~~the medical marijuana instructions are given, then also give the bracketed word "unlawfully" in the first paragraph and element 1.~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360; *People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 906 [121 Cal.Rptr. 363].
- Specific Intent ▸ *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Selling ▸ *People v. Lazenby* (1992) 6 Cal.App.4th 1842, 1845 [8 Cal.Rptr.2d 541].
- Administering ▸ Health & Saf. Code, § 11002.
- Administering Does Not Include Self-Administering ▸ *People v. Label* (1974) 43 Cal.App.3d 766, 770–771 [119 Cal.Rptr. 522].
- Compassionate Use Defense Generally ▸ *People v. Wright* (2006) 40 Cal.4th 81 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 [33 Cal.Rptr.3d 859]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1165–1167 [128 Cal.Rptr.2d 844]; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389 [70 Cal.Rptr.2d 20].
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375].
- Definition of Cannabis ▸ Health & Saf. Code, §11018.

- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [g]–[j], [3][a], [a.1] (Matthew Bender).

~~LESSER INCLUDED OFFENSES~~

- ~~Simple Possession of Marijuana ▸ Health & Saf. Code, § 11357.~~
- ~~Possession for Sale of Marijuana ▸ Health & Saf. Code, § 11359.~~

RELATED ISSUES

No Requirement That Defendant Delivered or Possessed Drugs

A defendant may be convicted of offering to sell even if there is no evidence that he or she delivered or ever possessed any controlled substance. (*People v. Jackson* (1963) 59 Cal.2d 468, 469 [30 Cal.Rptr. 329, 381 P.2d 1]; *People v. Brown* (1960) 55 Cal.2d 64, 68 [9 Cal.Rptr. 816, 357 P.2d 1072].)

2361. Transporting for Sale or Giving Away ~~Marijuana~~Cannabis: More Than 28.5 Grams (Health & Saf. Code, § 11360(a))

The defendant is charged [in Count _____] with ~~[unlawfully]~~ (giving away/ [or] transporting for sale) more than 28.5 grams of ~~marijuana~~ cannabis, a controlled substance [in violation of Health and Safety Code section 11360(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ (gave away/ [or] transported for sale) a controlled substance;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

4. **The controlled substance was ~~marijuana~~cannabis;**

AND

5. **The ~~marijuana~~ cannabis possessed by the defendant weighed more than 28.5 grams**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant (gave away/ [or] transported for sale) cannabis, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>

[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[Cannabis does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.]

[~~*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[A person *transports* something if he or she carries or moves it for sale from one location to another, even if the distance is short.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) (gave away/transported).]

[A person does not have to actually hold or touch something to (give it away/transport it). It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

New January 2006; Revised April 2010, October 2010, April 2011, February 2015, August 2016, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana" the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuanacannabis].)~~

If any of the penalty allegations under Health & Safety Code section 11360(a)(3) are charged, give CALCRIM No. 2364, as appropriate.

Defenses—Instructional Duty

If a medical ~~marijuana~~cannabis defense applies under the Compassionate Use Act or the Medical Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request, if supported by substantial evidence.

~~If the medical marijuana instructions are given, then also give the bracketed word "unlawfully" in the first paragraph and element 1.~~

Related Instructions

Use this instruction when the defendant is charged with transporting or giving away more than 28.5 grams of ~~marijuana~~cannabis. For offering to transport or give away more than 28.5 grams of ~~marijuana~~cannabis, use CALCRIM No. 2363, *Offering to Transport or Give Away ~~Marijuana~~Cannabis: More Than 28.5 Grams*. ~~For transporting or giving away 28.5 grams or less, use CALCRIM No. 2360, *Transporting or Giving Away Marijuana~~Cannabis~~: Not More Than 28.5 Grams – Misdemeanor*. For offering to transport or give away 28.5 grams or less of marijuana, use CALCRIM No. 2362, *Offering to Transport or Give Away Marijuana: Not More Than 28.5 Grams – Misdemeanor*.~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360(a).

- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Medical ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11362.5.
- Compassionate Use Defense to Transportation ▸ *People v. Wright* (2006) 40 Cal.4th 81, 87–88 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 [66 Cal.Rptr.2d 559].
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292–294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program ~~Act~~ Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].
- Prior Version of t~~T~~his Instruction Upheld ▸ *People v. Busch* (2010) 187 Cal.App.4th 150, 155-156 [113 Cal.Rptr.3d 683].
- Definition of Cannabis ▸ Health & Saf. Code, §11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b], [g], [3][a], [a.1] (Matthew Bender).

~~LESSER INCLUDED OFFENSES~~

- ~~Transporting, Giving Away, etc., Not More Than 28.5 Grams of Marijuana ▸ Health & Saf. Code, § 11360(b).~~

~~RELATED ISSUES~~

~~See the Related Issues section to CALCRIM No. 2360, *Transporting or Giving Away Marijuana: Not More Than 28.5 Grams—Misdemeanor*.~~

2363. Offering or Attempting to Transport for Sale or Offering to Give Away ~~Marijuana~~Cannabis: More Than 28.5 Grams (Health & Saf. Code, § 11360(a))

The defendant is charged [in Count ___] with ~~[unlawfully]~~ (offering to give away/ [or] offering to transport for sale/ [or] attempting to transport for sale) more than 28.5 grams of ~~marijuana~~ cannabis, a controlled substance [in violation of Health and Safety Code section 11360(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ (offered to give away/ [or] offered to transport for sale/ [or] attempted to transport for sale) ~~marijuana~~cannabis, a controlled substance, in an amount weighing more than 28.5 grams;**

AND

2. **When the defendant made the (offer/ [or] attempt), (he/she) intended to (give away/ [or] transport for sale) the controlled substance.**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant (offered to give away/ [or] offered to transport for sale/ [or] attempted to transport for sale) cannabis, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>

[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[Cannabis does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations food, drink, or other product.]

~~**[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[A person *transports* something if he or she carries or moves it for sale from one location to another, even if the distance is short.]

[The People do not need to prove that the defendant actually possessed the ~~marijuana~~cannabis.]

New January 2006; Revised April 2010, February 2015, August 2016, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana" the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

Also give CALCRIM No. 460, *Attempt Other Than Attempted Murder*, if the defendant is charged with attempt to transport.

Defenses—Instructional Duty

If a medical ~~marijuana~~cannabis defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request if supported by substantial evidence.

If any of the penalty allegations under Health & Safety Code section 11360(a)(3) are charged, give CALCRIM No. 2364, as appropriate.

~~If the medical marijuana instructions are given, then, in element 1, also give the bracketed word "unlawfully."~~

Related Instruction

Use this instruction when the defendant is charged with offering to transport or give away more than 28.5 grams of ~~marijuana~~cannabis. For transporting or giving away more than 28.5 grams of ~~marijuana~~cannabis, use CALCRIM No. 2361, *Transporting for Sale or Giving Away ~~Marijuana~~Cannabis: More Than 28.5 Grams*. ~~For offering to transport or give away 28.5 grams or less of marijuana, use CALCRIM No. 2362, *Offering to Transport or Give Away Marijuana: Not More Than 28.5 Grams – Misdemeanor*. For transporting or giving away 28.5 grams or less, use CALCRIM No. 2360, *Transporting or Giving Away Marijuana: Not More Than 28.5 Grams – Misdemeanor*.~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360(a).
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].

- Specific Intent ▸ *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].
- Medical ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11362.5.
- Compassionate Use Defense to Transportation ▸ *People v. Wright* (2006) 40 Cal.4th 81, 87–88 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 [66 Cal.Rptr.2d 559].
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].
- Definition of Cannabis ▸ Health & Saf. Code, §11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [g], [j], [3][a], [a.1] (Matthew Bender).

~~LESSER INCLUDED OFFENSES~~

- ~~Offering to Transport or Giving Away Not More Than 28.5 Grams of Marijuana ▸ Health & Saf. Code, § 11360(b).~~

~~RELATED ISSUES~~

~~See the Related Issues section to CALCRIM No. 2360, *Transporting or Giving Away Marijuana: Not More Than 28.5 Grams – Misdemeanor*.~~

~~2364~~2365–2369. Reserved for Future Use

2364. Felony Cannabis Penalty Allegations (Health & Saf. Code, § 11360(a)(3)

If you find the defendant guilty of _____ *<insert offense[s]>* **[as charged in Count[s] __], you must then decide whether the People have proved the additional allegation[s]. [You must decide whether the People have proved (this/these) allegation[s] for each crime and return a separate finding for each crime.]**

To prove (this/these) allegation[s] [for each crime], the People must prove that:

<Give the following paragraph if the defendant is charged under Health & Safety Code section 11360(a)(3)(A)>

> **[___. The defendant has at least one prior conviction for _____** *<insert description of offense requiring registration pursuant to Penal Code section 290(c) or for an offense specified in Penal Code section 667(e)(2)(C)(iv)>***(./;)]**

<Give the following paragraph if the defendant is charged under Health & Safety Code section 11360(a)(3)(B)>

> **[___. The defendant has at least two prior convictions for _____***<insert description of offense specified in Health & Safety Code sections 11360(a) and 11360(a)(2)***(./;)]**

<Give the following paragraph if the defendant is charged under Health & Safety Code section 11360 (a)(3)(C):

> **[___. When committing that crime, the defendant knew that (he/she) was selling, furnishing, administering, giving away, attempting to sell, or offering to sell, furnish, administer, or give away cannabis to a person under the age of 18 years(./;)]**

<Give the following paragraphs if the defendant is charged under Health & Safety Code section 11360(a)(3)(D)>

> **[___. The defendant (imported/[or] offered to import/[or] attempted to import) (more than 28.5 grams of cannabis/more than 4 grams of concentrated cannabis) into California (./;)]**

[OR]

[___. The defendant (transported for sale/ [or] offered to transport for sale/ [or] attempted to transport for sale) (more than 28.5 grams of cannabis/more than 4 grams of concentrated cannabis) out of California.]

[*Selling* for the purpose of this instruction means exchanging the cannabis for money, services, or anything of value.]

[A person administers a substance if he or she applies it directly to the body of another person by injection, or by any other means, or causes the other person to inhale, ingest, or otherwise consume the substance.]

[Cannabis means all or part of the Cannabis sativa L. plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, § 11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[Cannabis does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.]

[Concentrated cannabis means the separated resin, whether crude or purified, from cannabis.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) (sold/furnished/administered/imported).]

[A person does not have to actually hold or touch something to (sell/furnish/administer/import) it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

The People have the burden of proving an allegation beyond a reasonable doubt. If the People have not met that burden as to an allegation, you must find that allegation has not been proved.

New September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of an enhancement. (See, e.g., *People v. Wallace* (2003) 109 Cal.App.4th 1699, 1702 [1 Cal.Rptr.3d 324] [statute defines enhancement, not separate offense].)

Give all relevant bracketed definitions.

Related Instructions

CALCRIM No. 2361, *Transporting or Giving Away Cannabis: More Than 28.5 Grams.*

CALCRIM No. 2363, *Offering or Attempting to Transport for Sale or Offering to Give Away Cannabis: More Than 28.5 Grams*.

AUTHORITY

- Enhancements ▸ Health & Saf. Code, § 11360(a)(3).
- Enhancement, Not Substantive Offense ▸ *People v. Wallace* (2003) 109 Cal.App.4th 1699, 1702 [1 Cal.Rptr.3d 324].
- Definition of Cannabis ▸ Health & Saf. Code, §11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5.

2365-2369. Reserved for Future Use

2352. Possession for Sale of ~~Marijuana~~Cannabis (Health & Saf. Code, ~~§§ 11018,~~ 11359)

The defendant is charged [in Count ___] with ~~[unlawfully]~~ possessing for sale ~~marijuana~~cannabis, a controlled substance [in violation of Health and Safety Code section 11359].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ possessed a controlled substance;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

4. **When the defendant possessed the controlled substance, (he/she) intended (to sell it/ [or] that someone else sell it);**

~~4.~~5. **The controlled substance was~~marijuana~~ cannabis;**

~~[~~AND~~]~~

6. **The controlled substance was in a usable amount(./;)**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant possessed cannabis for sale, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[If you find the defendant guilty of this crime [as charged in Count[s] ___], and you find that the defendant was 18 years of age or older, then you must decide whether the People have proved the following allegation[s]. [You must decide whether the People have proved (this/these) allegation[s] and return a separate finding for each allegation.]

To prove (this/these) allegation[s] [for each crime], the People must prove that:

<Insert the appropriate bracketed paragraphs if the defendant is charged under one of the paragraphs of Health and Safety Code section 11359(c) and sequentially number them as appropriate>

[___. When the defendant possessed cannabis, (he/she) knew that (he/she) was (selling/ [or] attempting to sell) cannabis to another person under the age of 18 years(./;)]

[___. The defendant has at least two prior convictions for possession of cannabis for sale(./;)]

[___. The defendant has at least one prior conviction for (_____) *<insert description of offense requiring registration pursuant to Penal Code section 290 or for an offense specified in clause (iv) of subparagraph (c) of paragraph (2) of subdivision (e) of Penal Code section 667.>***](./;)**

<Insert the following bracketed paragraphs if defendant is charged with violating Health and Safety Code section 11359(d)>

[___. The defendant was 21 years of age or older when (he/she) (hired/employed/used) a person 20 years of age or younger to [unlawfully] (cultivate[,]/ [or] transport[,]/ [or] carry[,]/ [or] sell[,]/ [or] offer to sell[,]/ [or] give away[,]/ [or] prepare for sale[,]/ [or] peddle) cannabis(./;)

AND

When the defendant (hired/employed/used) a person 20 years of age or younger to [unlawfully] (cultivate[,]/ [or] transport[,]/ [or] carry[,]/ [or] sell[,]/ [or] offer to sell[,]/ [or] give away[,]/ [or] prepare for sale[,]/ [or] peddle) cannabis, (he/she) knew that person's age and the tasks that the person would be doing(./;)]

Selling **for the purpose of this instruction means exchanging the ~~marijuana~~ cannabis for money, services, or anything of value.**

A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On

the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~**[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination].**~~

~~**[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]**~~

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.]

New January 2006; Revised December 2008, October 2010, February 2015, February 2016, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the appropriate bracketed elements if the offense is charged as a felony.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marjuana].)~~

If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request if supported by substantial evidence.

If ~~the medical marijuana instructions are given, then also give the bracketed word "unlawfully" in the first paragraph and element 1.~~

If the defendant is charged with prior convictions under subdivisions (c)(1) or (2) of section 11359, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, as appropriate.

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11359.

- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Selling ▸ *People v. Lazenby* (1992) 6 Cal.App.4th 1842, 1845 [8 Cal.Rptr.2d 541].
- Usable Amount ▸ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Compassionate Use Defense Generally ▸ *People v. Wright* (2006) 40 Cal.4th 81 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 [33 Cal.Rptr.3d 859]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1165–1167 [128 Cal.Rptr.2d 844]; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389 [70 Cal.Rptr.2d 20].
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375]
- Specific Intent to Sell Personally or That Another Will Sell Required ▸ *People v. Parra* (1999) 70 Cal. App. 4th 222, 226 [70 Cal.App.4th 222] and *People v. Consuegra* (1994) 26 Cal. App. 4th 1726, 1732, fn. 4 [32 Cal.Rptr.2d 288].
- Definition of ~~Marijuana~~Cannabis~~" Defined~~ ▸ Health & Saf. Code, § 11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, §11018.5

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 90, 101.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[e], [3][a], [a.1] (Matthew Bender).

~~LESSER INCLUDED OFFENSES~~

- ~~Simple Possession of Marijuana~~Cannabis~~. Health & Saf. Code, § 11357, *People v. Walker* (2015) 237 Cal.App.4th 111 [187 Cal.Rptr.3d 606] [duty to instruct extends to infraction for possessing less than 28.5 g] [reversible error not to instruct on simple possession of marijuana~~cannabis, an infraction, in case charged as possession of marijuana~~cannabis~~ for sale].~~

2353–2359. Reserved for Future Use

2370. Planting, etc., ~~Marijuana~~Cannabis (Health & Saf. Code, §§ 11358(c)-(d))

The defendant is charged [in Count ___] with ~~[unlawfully]~~ (planting[,] [or]/ cultivating[,] [or]/ harvesting[,] [or]/ drying[,] [or]/ processing) more than six living ~~marijuana~~cannabis plants, [or any part thereof,] a controlled substance [in violation of Health and Safety Code section 11358_____<*insert appropriate subsection[s] of statute*~~((d))~~>].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ (planted[,] [or]/ cultivated[,] [or]/ harvested[,] [or]/ dried[,] [or]/ processed) ~~one or~~ more than six ~~marijuana~~cannabis plants;**

AND

2. **The defendant knew that the substance (he/she) (planted[,] [or]/ cultivated[,] [or]/ harvested[,] [or]/ dried[,] [or]/ processed) was ~~marijuana~~cannabis(./;)**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant (planted[,] [or]/ cultivated[,] [or]/ harvested[,] [or]/ dried[,] [or]/ processed) more than six cannabis plants, (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

If you find the defendant guilty of _____ *<insert offense[s]>* **[as charged in Count[s] __], you must then decide whether the People have proved the additional allegation[s]. [You must decide whether the People have proved (this/these) allegation[s] for each crime and return a separate finding for each crime.]**

To prove (this/these) allegation[s] [for each crime], the People must prove that:

<Give the next paragraph if defendant is charged with violating a subsection of Health & Safety Code section 11358(d)>

[. (The defendant's conduct caused _____ *<insert description of statutory violation specified in Health & Safety Code section 11358(d)(3)>/*
The defendant intentionally or with gross negligence caused substantial environmental harm to public lands or other public resources;)]

<Give the appropriate paragraphs below if defendant has prior convictions specified in Health & Safety Code section 11358(d)(1-2)>

[. The defendant has at least two prior convictions for _____ *<insert description of prior convictions for this crime>*
(./;)]

[. The defendant has at least one prior conviction for _____ *<insert description of offense[s] specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code>*.**]**

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~**[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative,**~~

~~**mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]**~~

New January 2006; Revised June 2007, April 2010, February 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

Defenses—Instructional Duty

A medical marijuana defense under the Compassionate Use Act or the Medical Marijuana Program Act may be raised to a charge of violating Health and Safety Code section 11358. (See Health & Saf. Code, §§ 11362.5, 11362.775.) The burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful , the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense*, on request if supported by substantial evidence.~~If the medical marijuana instructions are given, then also give the bracketed word "unlawfully" in the first paragraph and element 1.~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11358.
- Harvesting ▸ *People v. Villa* (1983) 144 Cal.App.3d 386, 390 [192 Cal.Rptr. 674].

- Aider and Abettor Liability ▸ *People v. Null* (1984) 157 Cal.App.3d 849, 852 [204 Cal.Rptr. 580].
- Medical ~~Marijuana~~Cannabis ▸ Health & Saf. Code, §§ 11362.5, 11362.775.
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Amount Must Be Reasonably Related to Patient's Medical Needs ▸ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].
- ~~"Cannabis" Defined~~Definition of Cannabis ▸ Health & Saf. Code, §11018.
- Definition of Industrial Hemp ~~Defined~~ ▸ Health & Saf. Code, §11018.5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 136-146.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b], [3][a], [a.1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Simple Possession of ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11357.

RELATED ISSUES

Aider and Abettor Liability of Landowner

In *People v. Null* (1984) 157 Cal.App.3d 849, 852 [204 Cal.Rptr. 580], the court held that a landowner could be convicted of aiding and abetting cultivation of ~~marijuana~~cannabis based on his or her knowledge of the activity and failure to prevent it. "If [the landowner] knew of the existence of the illegal activity, her failure to take steps to stop it would aid and abet the commission of the crime. This conclusion is based upon the control that she had over her property." *(Ibid.)*

2371–2374. Reserved for Future Use

2375. Simple Possession of ~~Marijuana~~Cannabis or Concentrated Cannabis: Misdemeanor (Health & Saf. Code, § 11357(~~c~~b))

The defendant is charged [in Count _____] with ~~[unlawfully]~~ possessing (more than 28.5 grams of ~~marijuana~~cannabis/more than 8 grams of concentrated cannabis), a controlled substance [in violation of Health and Safety Code section 11357(~~c~~b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ possessed a controlled substance;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

4. **The controlled substance was ~~marijuana~~(cannabis/concentrated cannabis) ;**

AND

5. **The ~~marijuana~~ (cannabis/concentrated cannabis) possessed by the defendant weighed more than (28.5 grams/8 grams~~.~~);**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant possessed (cannabis/concentrated cannabis), (he/she) was 18 years of age or older.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>

[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[Cannabis does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations food, drink, or other product.]

~~**[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]**~~

[*Concentrated cannabis* means the separated resin, whether crude or purified, from the cannabis plant.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.]

New January 2006; Revised June 2007, April 2010, October 2010, April 2011, February 2015; September 2018.

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

Defenses—Instructional Duty

If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense,* or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

Give CALCRIM No. 3415, *Legal Use Defense,* on request if supported by substantial evidence

~~If the medical marijuana~~cannabis ~~instructions are given, then, in element 1, also give the bracketed word "unlawfully."~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11357(~~c~~b); *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717].
- ~~"Marijuana~~Definition of Cannabis~~" Defined~~ ▸ Health & Saf. Code, § 11018.
- Definition of Industrial Hemp ▸ Health & Saf. Code, § 11018.5.
- Definition of Concentrated Cannabis ▸ Health & Saf. Code, § 11006.5.
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].

- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Medical ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11362.5.
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Frazier* (2005) 128 Cal.App.4th 807, 820–821].
- Amount Must Be Reasonably Related to Patient's Medical Needs ▸ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061]. Defendant's Burden of Proof on Compassionate Use Defense**.** *People v. Mentch* (2008) 45 Cal.4th 274, 292–294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].
- ~~This~~ Prior Version of this Instruction Upheld ▸ *People v. Busch* (2010) 187 Cal.App.4th 150, 160 [113 Cal.Rptr.3d 683].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 76-77.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b], [d], [3][a], [a.1] (Matthew Bender).

2376. Simple Possession of ~~Marijuana~~Cannabis or Concentrated Cannabis on School Grounds: Misdemeanor (Health & Saf. Code, § 11357(~~d~~c))

The defendant is charged [in Count ___] with ~~[unlawfully]~~ possessing ~~marijuana~~(cannabis/concentrated cannabis), a controlled substance, on the grounds of a school [in violation of Health and Safety Code section 11357(~~d~~c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant ~~[unlawfully]~~ possessed a controlled substance;**
2. **The defendant knew of its presence;**
3. **The defendant knew of the substance's nature or character as a controlled substance;**
4. **The controlled substance was ~~marijuana~~(cannabis/concentrated cannabis);**
5. **The ~~marijuana~~(cannabis/concentrated cannabis) was in a usable amount but not more than (28.5 grams/8 grams) ~~in weight~~;**
6. ~~**The defendant was at least 18 years old;**~~

AND

~~7.~~**6. The defendant possessed the ~~marijuana~~(cannabis/concentrated cannabis) on the grounds of or inside a school providing instruction in any grade from kindergarten through 12, when the school was open for classes or school-related programs.**

<Sentencing Factor on defendant's age>
If you find the defendant guilty of this crime [as charged in Count[s] ___], you must then decide whether the People have proved the additional allegation that when the defendant possessed (cannabis/concentrated cannabis), (he/she) was 18 years of age or older.

A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[Cannabis does not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.]

[*Concentrated cannabis* means the separated resin, whether crude or purified, from the cannabis plant.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised June 2007, April 2010, October 2010, February 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

~~When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)~~

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty

If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

~~If the medical marijuana instructions are given, then, in element 1, also give the bracketed word "unlawfully."~~

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11357(~~d~~c); *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717].
- "Definition of ~~Marijuana~~Cannabis~~" Defined~~ ▸ Health & Saf. Code, § 11018.
- Definition of Concentrated Cannabis ▸ Health & Saf. Code, § 11006.5.
- Definition of Industrial Hemp ▸ Health & Saf. Code, § 11018.5.
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Usable Amount ▸ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Medical ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11362.5.
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Frazier* (2005) 128 Cal.App.4th 807, 820–821 [27 Cal.Rptr.3d 336].
- Amount Must Be Reasonably Related to Patient's Medical Needs ▸ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 76-77.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[d], [3][a], [a.1] (Matthew Bender).

3415. Lawful Use Defense (Health & Saf. Code, § 11362.1)

It is lawful for a person 21 years of age or older to do any of the following:

[(Possess[,]/ [or] process[,]/ [or] transport[,]/ [or] purchase[,]/ [or] obtain[,]/ [or] give away to persons 21 years of age or older), without receiving compensation, no more than 28.5 grams of cannabis [that is not in the form of concentrated cannabis.]]

[(Possess[,]/ [or] process[,]/ [or] transport[,]/ [or] purchase[,]/ [or] obtain[,]/ [or] give away to persons 21 years of age or older) without receiving compensation, no more than eight grams of cannabis in the form of concentrated cannabis, including concentrated cannabis contained in cannabis products.]

[(Possess[,]/ [or] plant[,]/ [or] cultivate[,]/ [or] harvest[,]/ [or] dry[,]/ [or] process) no more than six living cannabis plants and possess the cannabis produced by those plants.]

[Smoke or ingest cannabis or cannabis products.]

[(Possess[,]/ [or] transport[,]/ [or] purchase[,]/ [or] obtain[,]/ [or] use[,]/ [or] manufacture[,]/ [or] give away to persons 21 years of age or older without receiving compensation) cannabis accessories.]

The People have the burden of proving beyond a reasonable doubt that the defendant did not lawfully (possess[,]/ [or] transport[,]/ [or] purchase[,]/ [or] obtain[,]/ [or] give away[,]/ [or] plant[,]/ [or] cultivate[,]/ [or] harvest[,]/ [or] dry[,]/ [or] process) (cannabis[,]/ [or] concentrated cannabis[,]/ [or] cannabis products.) If the People have not met this burden, you must find the defendant not guilty of this crime.

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L.

with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New September 2018

BENCH NOTES

Instructional Duty

Pursuant to Health & Saf. Code, § 11362.1, certain activities involving cannabis are lawful. Give the relevant bracketed paragraphs on defense request.

This instruction does not apply to offenses charged under Health & Saf. Code, §§ 11362.2, 11362.3, and 11362.4, nor to any of the offenses enumerated in Health & Saf. Code § 11362.45.

AUTHORITY

- Elements**.** Health & Saf. Code, §§ 11362.1, 11362.2, 11362.3, 11362.4, 11362.45.
- Definition of Cannabis. Health & Saf. Code, § 11018.
- Definition of Industrial Hemp. Health & Saf. Code, § 11018.5.

2330. Manufacturing a Controlled Substance (Health & Saf. Code, § 11379.6(a) ~~& (b)~~)

The defendant is charged [in Count ___] with [unlawfully] (manufacturing/compounding/converting/producing/deriving/processing/preparing) _____ *<insert concentrated cannabis or a controlled substance from Health & Saf. Code, §§ 11054, 11055, 11056, 11057, or 11058>***, a controlled substance [in violation of Health and Safety Code section 11379.6/section 11362.3].**

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (manufactured/compounded/converted/produced/derived/processed/prepared) a controlled substance, specifically _____** *<insert controlled substance>***, using chemical extraction or independent chemical synthesis;**

[AND]

2. **The defendant knew of the substance's nature or character as a controlled substance.**

[The chemical extraction or independent chemical synthesis may be done either directly or indirectly.]

[The People do not need to prove that the defendant knew which specific controlled substance was involved, only that (he/she) was aware that it was a controlled substance.]

[The People do not need to prove that the defendant completed the process of manufacturing or producing a controlled substance. Rather, the People must prove that the defendant knowingly participated in the beginning or intermediate steps to process or make a controlled substance. [Thus, the defendant is guilty of this crime if the People have proved that:

1. **The defendant engaged in the synthesis, processing, or preparation of a chemical that is not itself a controlled substance;**

AND

2. The defendant knew that the chemical was going to be used in the manufacture of a controlled substance.]]

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed paragraph stating that "The People do not need to prove that the defendant completed the process" when the evidence indicates that the defendant completed only initial or intermediary stages of the process. (*People v. Jackson* (1990) 218 Cal.App.3d 1493, 1503–1504 [267 Cal.Rptr. 841]; *People v. Lancellotti* (1993) 19 Cal.App.4th 809, 813 [23 Cal.Rptr.2d 640].) Give the final bracketed section stating "Thus, the defendant is guilty" when the evidence shows that the defendant manufactured a precursor chemical, such as ephedrine, but had not completed the process of manufacturing a controlled substance. (*People v. Pierson* (2000) 86 Cal.App.4th 983, 992 [103 Cal.Rptr.2d 817].)

AUTHORITY

- Elements**.** Health & Saf. Code, §§ 11379.6(a) & (b), 11054–11058, 11362.3(a)(6).
- Knowledge of Controlled Substance**.** *People v. Coria* (1999) 21 Cal.4th 868, 874 [89 Cal.Rptr.2d 650, 985 P.2d 970].
- Initial or Intermediary Stages. *People v. Jackson* (1990) 218 Cal.App.3d 1493, 1503–1504 [267 Cal.Rptr. 841]; *People v. Lancellotti* (1993) 19 Cal.App.4th 809, 813 [23 Cal.Rptr.2d 640]; *People v. Heath* (1998) 66 Cal.App.4th 697, 703–704 [78 Cal.Rptr.2d 240].
- Precursor Chemicals. *People v. Pierson* (2000) 86 Cal.App.4th 983, 992 [103 Cal.Rptr.2d 817].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 112.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b], [f] (Matthew Bender).

RELATED ISSUES

Providing Place for Manufacture

Health and Safety Code section 11366.5 prohibits providing a place for the manufacture or storage of a controlled substance. A defendant who provides a place for the manufacture of a controlled substance may be convicted both as an aider and abettor under Health and Safety Code section 11379.6 and as a principal under Health and Safety Code section 11366.5. (*People v. Sanchez* (1994) 27 Cal.App.4th 918, 923 [33 Cal.Rptr.2d 155]; *People v. Glenos* (1992) 7 Cal.App.4th 1201, 1208 [10 Cal.Rptr.2d 363].) Conviction under Health and Safety Code section 11379.6 requires evidence that the defendant specifically intended to aid the manufacture of the controlled substance, while conviction under Health and Safety Code section 11366.5 requires evidence that the defendant knew that the controlled substance was for sale or distribution. (*People v. Sanchez* (1994) 27 Cal.App.4th 918, 923 [33 Cal.Rptr.2d 155]; *People v. Glenos* (1992) 7 Cal.App.4th 1201, 1208 [10 Cal.Rptr.2d 363].)

2384. Inducing Minor to Violate Controlled Substance Laws (Health & Saf. Code, §§ 11353, 11354, 11380(a))

The defendant is charged [in Count __] with (soliciting/inducing/encouraging/intimidating) someone under 18 years of age to commit the crime of _____ *<insert description of Health and Safety Code violation alleged>* **[in violation of_____** *<insert appropriate code section[s]>***].**

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant willfully (solicited/induced/encouraged/intimidated) _____** *<insert name of person solicited>* **to commit the crime of _____** *<insert description of Health and Safety Code violation alleged>* **[of] a controlled substance;**

<If the controlled substance is not listed in the schedules set forth in sections 11054 through 11058 of the Health and Safety Code, give paragraph 2B and the definition of analog substance below instead of paragraph 2A.>

2A. The controlled substance was _____ *<insert type of controlled substance>***;**

2B. The controlled substance was an analog of _____ *<insert type of controlled substance>***;**

3. The defendant intended that _____ *<insert name of person solicited>* **would commit that crime;**

4. At that time, the defendant was 18 years of age or older;

AND

5. At that time, _____ *<insert name of person solicited>* **was under 18 years of age.**

[In order to prove that the defendant is guilty of this crime, the People must prove that _____*<insert name of analog drug>* **is an analog of**

_____<*insert type of controlled substance*>. **An analog of a controlled substance:**

[1. Has a chemical structure substantially similar to the structure of a controlled substance(./;)]

[OR]

[(2/1). Has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the effect of a controlled substance.]]

To decide whether the defendant intended that _____ <*insert name of person solicited*> **would commit the crime of _____** <*insert description of Health and Safety Code violation alleged*>**, please refer to the separate instructions that I (will give/have given) you on that crime.**

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<*Defense: Good Faith Belief Over 18*>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that _____ <*insert name of person solicited*> **was 18 years of age or older. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that _____** <*insert name of person solicited*> **was at least 18 years of age. If the People have not met this burden, you must find the defendant not guilty of this crime.]**

New January 2006; Revised February 2014, September 2017, September 2018

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Where indicated in the instruction, insert a description of the Health and Safety Code violation allegedly solicited. For example, "the crime of possession for sale of cocaine," or "the crime of sale of ~~marijuana~~ cannabis."

If the defendant is charged with violating Health and Safety Code section 11354(a), in element 3, the court should replace "18 years of age or older" with "under 18 years of age."

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty

The court has a **sua sponte** duty to give the final bracketed paragraph if there is substantial evidence supporting the defense that the defendant had a reasonable and good faith belief that the person was over 18 years of age. (*People v. Goldstein* (1982) 130 Cal.App.3d 1024, 1036–1037 [182 Cal.Rptr. 207].)

AUTHORITY

- Elements ▸ Health & Saf. Code, §§ 11353, 11354, 11380(a).
- Age of Defendant Element of Offense ▸ *People v. Montalvo* (1971) 4 Cal.3d 328, 332 [93 Cal.Rptr. 581, 482 P.2d 205].
- Good Faith Belief Minor Over 18 Defense to Inducing or Soliciting ▸ *People v. Goldstein* (1982) 130 Cal.App.3d 1024, 1036–1037 [182 Cal.Rptr. 207].
- Definition of Analog Controlled Substance ▸ Health & Saf. Code, § 11401; *People v. Davis* (2013) 57 Cal.4th 353, 357, fn. 2 [159 Cal.Rptr.3d 405, 303 P.3d 1179].
- No Finding Necessary for "Expressly Listed" Controlled Substance ▸ *People v. Davis, supra,* 57 Cal.4th at p. 362, fn. 5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 124, 125.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.06[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.12, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01[1][a], [3][a] (Matthew Bender).

2385–2389. Reserved for Future Use

2390. Sale, Furnishing, etc., of ~~Marijuana~~Cannabis to Minor (Health & Saf. Code, § 11361)

The defendant is charged [in Count __] with (selling/furnishing/administering/giving away) ~~marijuana~~cannabis, a controlled substance, to someone under (18/14) years of age [in violation of Health and Safety Code section 11361].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (sold/furnished/administered/gave away) ~~marijuana~~cannabis, a controlled substance, to _____** *<insert name of alleged recipient>***;**

2. **The defendant knew of the presence of the controlled substance;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

4. **At that time, the defendant was 18 years of age or older;**

[AND]

5. **At that time, _____** *<insert name of alleged recipient>* **was under (18/14) years of age;**

<Give element 6 when instructing on usable amount; see Bench Notes.>
[AND

6. **The ~~marijuana~~cannabis was in a usable amount.]**

[*Selling* for the purpose of this instruction means exchanging the ~~marijuana~~cannabis for money, services, or anything of value.]

[A person *administers* a substance if he or she applies it directly to the body of another person by injection, or by any other means, or causes the other person to inhale, ingest, or otherwise consume the substance.]

[A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~**Marijuana means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) (sold/furnished/administered/gave away).]

[A person does not have to actually hold or touch something to (sell it/furnish it/administer it/give it away). It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised October 2010, September 2018

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 5, give the alternative of "under 14 years of age" only if the defendant is charged with furnishing, administering, or giving away ~~marijuana~~cannabis to a minor under 14. (Health & Saf. Code, § 11361(a).)

Sale of a controlled substance does not require a usable amount. (See *People v. Peregrina-Larios* (1994) 22 Cal.App.4th 1522, 1524 [28 Cal.Rptr.2d 316].) When the prosecution alleges sales, do not use bracketed element 6 or the definition of usable amount. There is no case law on whether furnishing, administering, or giving away require usable quantities. (See *People v. Emmal* (1998) 68 Cal.App.4th 1313, 1316 [80 Cal.Rptr.2d 907] [transportation requires usable quantity]; *People v. Ormiston* (2003) 105 Cal.App.4th 676, 682 [129 Cal.Rptr.2d 567] [same].) Element 6 and the bracketed definition of usable amount are provided here for the court to use at its discretion.

When instructing on the definition of "~~marijuana~~cannabis," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining ~~marijuana~~cannabis].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements**.** Health & Saf. Code, § 11361.
- Age of Defendant Element of Offense. *People v. Montalvo* (1971) 4 Cal.3d 328, 332 [93 Cal.Rptr. 581, 482 P.2d 205].
- No Defense of Good Faith Belief Offeree Over 18. *People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454]; *People v. Lopez* (1969) 271 Cal.App.2d 754, 760 [77 Cal.Rptr. 59].
- Administering. Health & Saf. Code, § 11002.
- Knowledge**.** *People v. Horn* (1960) 187 Cal.App.2d 68, 74–75 [9 Cal.Rptr. 578].
- Selling ‣ *People v. Lazenby* (1992) 6 Cal.App.4th 1842, 1845 [8 Cal.Rptr.2d 541].
- Constructive vs. Actual Possession ‣ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].

- Usable Amount ▸ *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- "Cannabis" Defined. Health & Saf. Code, §11018.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 103–105.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.06[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[c], [h], [i], [3][a] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Sale to Person Not a Minor ▸ Health & Saf. Code, § 11360.
- Simple Possession of ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11357.
- Possession for Sale of ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11359.

RELATED ISSUES

No Defense of Good Faith Belief Over 18

"The specific intent for the crime of selling cocaine to a minor is the intent to sell cocaine, not the intent to sell it to a minor. [Citations omitted.] It follows that ignorance as to the age of the offeree neither disproves criminal intent nor negates an evil design on the part of the offerer. It therefore does not give rise to a 'mistake of fact' defense to the intent element of the crime. [Citations omitted.]" (*People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454].)

2391. Offering to Sell, Furnish, etc., ~~Marijuana~~Cannabis to Minor (Health & Saf. Code, § 11361)

The defendant is charged [in Count ___] with offering to (sell/furnish/administer/give away) ~~marijuana~~cannabis, a controlled substance, to someone under (18/14) years of age [in violation of Health and Safety Code section 11361].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] offered to (sell/furnish/administer/give away) ~~marijuana~~cannabis, a controlled substance, to _____** *<insert name of alleged recipient>***;**

2. **When the defendant made the offer, (he/she) intended to (sell/furnish/administer/give away) the controlled substance;**

3. **At that time, the defendant was 18 years of age or older;**

AND

4. **At that time, _____** *<insert name of alleged recipient>* **was under (18/14) years of age.**

[*Selling* for the purpose of this instruction means exchanging the ~~marijuana~~cannabis for money, services, or anything of value.]

[A person *administers* a substance if he or she applies it directly to the body of another person by injection, or by any other means, or causes the other person to inhale, ingest, or otherwise consume the substance.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa

L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[~~*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[The People do not need to prove that the defendant actually possessed the ~~marijuana~~cannabis.]

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 4, give the alternative of "under 14 years of age" only if the defendant is charged with offering to furnish, administer, or give away ~~marijuana~~cannabis to a minor under 14. (Health & Saf. Code, § 11361(a).)

~~When instructing on the definition of "marijuana~~cannabis~~," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana~~cannabis~~].)~~

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11361.
- Age of Defendant Element of Offense ▸ *People v. Montalvo* (1971) 4 Cal.3d 328, 332 [93 Cal.Rptr. 581, 482 P.2d 205].
- No Defense of Good Faith Belief Offeree Over 18 ▸ *People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454]; *People v. Lopez* (1969) 271 Cal.App.2d 754, 760 [77 Cal.Rptr. 59].
- Specific Intent ▸ *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].
- Administering ▸ Health & Saf. Code, § 11002.
- "Cannabis" Defined. Health & Saf. Code, §11018.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 103–105.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.06[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [h]–[j], [3][a] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Offering to Sell to Person Not a Minor ▸ Health & Saf. Code, § 11360.
- Simple Possession of ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11357.
- Possession for Sale of ~~Marijuana~~Cannabis ▸ Health & Saf. Code, § 11359.
- "Cannabis" Defined. Health & Saf. Code, §11018.

RELATED ISSUES

No Requirement That Defendant Delivered or Possessed Drugs

A defendant may be convicted of offering to sell even if there is no evidence that he or she delivered or ever possessed any controlled substance. (*People v. Jackson* (1963) 59 Cal.2d 468, 469 [30 Cal.Rptr. 329, 381 P.2d 1]; *People v. Brown* (1960) 55 Cal.2d 64, 68 [9 Cal.Rptr. 816, 357 P.2d 1072].)

See the Related Issues section to CALCRIM No. 2390, *Sale, Furnishing, etc., of ~~Marijuana~~Cannabis to Minor*.

2392. Employment of Minor to Sell, etc., ~~Marijuana~~Cannabis (Health & Saf. Code, § 11361(a))

The defendant is charged [in Count __] with (hiring/employing/using) someone under 18 years of age to (transport/carry/sell/give away/prepare for sale/peddle) ~~marijuana~~cannabis, a controlled substance [in violation of Health and Safety Code section 11361(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (hired/employed/used) _____** *<insert name of person hired>***;**

2. **_____** *<insert name of person hired>* **was (hired/employed/used) to (transport/carry/sell/give away/prepare for sale/peddle) ~~marijuana~~cannabis, a controlled substance;**

3. **At that time, the defendant was 18 years of age or older;**

4. **At that time, _____** *<insert name of person hired>* **was under 18 years of age;**

AND

5. **The defendant knew of the substance's nature or character as a controlled substance.**

[*Selling* for the purpose of this instruction means exchanging the ~~marijuana~~cannabis for money, services, or anything of value.]

[A person *transports* something if he or she carries or moves it from one location to another, even if the distance is short.]

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>

[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. Industrial hemp may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

[~~*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]~~

[The People do not need to prove that the defendant knew which specific controlled substance was to be (transported/carried/sold/given away/prepared for sale/peddled), only that (he/she) was aware that it was a controlled substance.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When instructing on the definition of "~~marijuana~~cannabis," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining ~~marijuana~~cannabis].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11361(a).
- Age of Defendant Element of Offense ▸ *People v. Montalvo* (1971) 4 Cal.3d 328, 332 [93 Cal.Rptr. 581, 482 P.2d 205].
- Knowledge ▸ *People v. Horn* (1960) 187 Cal.App.2d 68, 74–75 [9 Cal.Rptr. 578].
- Selling ▸ *People v. Lazenby* (1992) 6 Cal.App.4th 1842, 1845 [8 Cal.Rptr.2d 541].
- "Cannabis" Defined. Health & Saf. Code, §11018.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 103–105.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.06[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b], [g], [h], [3][a] (Matthew Bender).

2393. Inducing Minor to Use ~~Marijuana~~Cannabis (Health & Saf. Code, § 11361(a))

The defendant is charged [in Count __] with inducing someone under 18 years of age to use ~~marijuana~~cannabis [in violation of Health and Safety Code section 11361(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (encouraged/persuaded/solicited/intimidated/induced) _____** *<insert name of person solicited>* **to use ~~marijuana~~cannabis;**

2. **At that time, the defendant was at least 18 years of age or older;**

   AND

3. **At that time, _____** *<insert name of person solicited>* **was under 18 years of age.**

[*Cannabis* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.]]

<If applicable, give the definition of industrial hemp: Health & Saf. Code, §11018.5>
[Cannabis does not include industrial hemp. Industrial hemp means a fiber or oilseed crop, or both, that only contain types of the plant Cannabis sativa L. with no more than three-tenths of 1 percent tetrahydrocannabinol from the dried flowering tops, whether growing or not. It may include the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced from the seeds.]

~~[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the~~

~~**seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant which is incapable of germination.]]**~~

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief Over 18>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that _____ *<insert name of person solicited>* **was at least 18 years of age. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that _____** *<insert name of person solicited>* **was at least 18 years of age. If the People have not met this burden, you must find the defendant not guilty of this crime.]**

New January 2006; Revised September 2018

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty
The court has a **sua sponte** duty to give the final bracketed paragraph if there is substantial evidence supporting the defense that the defendant had a reasonable and good faith belief that the person was over 18 years of age. (*People v. Goldstein* (1982) 130 Cal.App.3d 1024, 1036–1037 [182 Cal.Rptr. 207].)

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11361(a).
- Age of Defendant Element of Offense ▸ *People v. Montalvo* (1971) 4 Cal.3d 328, 332 [93 Cal.Rptr. 581, 482 P.2d 205].
- Good Faith Belief Minor Over 18 Defense to Inducing or Soliciting ▸ *People v. Goldstein* (1982) 130 Cal.App.3d 1024, 1036–1037 [182 Cal.Rptr. 207].

- "Cannabis" Defined. Health & Saf. Code, §11018.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 105.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.06[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [3][a] (Matthew Bender).

2394–2399. Reserved for Future Use

2410. Possession of Controlled Substance Paraphernalia (Health & Saf. Code, § 11364)

The defendant is charged [in Count __] with possessing an object that can be used to unlawfully inject or smoke a controlled substance [in violation of Health and Safety Code section 11364].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] possessed an object used for unlawfully injecting or smoking a controlled substance;**

2. **The defendant knew of the object's presence;**

   AND

3. **The defendant knew it to be an object used for unlawfully injecting or smoking a controlled substance.**

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant possessed the following items: _____ *<insert each specific item of paraphernalia when multiple items alleged>***. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these items and you all agree on which item (he/she) possessed.]**

<Defense: Authorized Possession for Personal Use>
[The defendant did not unlawfully possess [a] hypodermic (needle[s]/ [or] syringe[s]) if (he/she) was legally authorized to possess (it/them). The defendant was legally authorized to possess (it/them) if:

1. **(He/She) possessed the (needle[s]/ [or] syringe[s]) for personal use;**

   [AND]

2. **(He/She) obtained (it/them) from _____**<*insert source authorized by Health & Safety Code section 11364(c)*> **.]**

The People have the burden of proving beyond a reasonable doubt that the defendant was not legally authorized to possess the hypodermic (needle[s]/ [or] syringe[s]). If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised October 2010, April 2011, August 2015, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483]; *People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed," inserting the items alleged.

Defenses—Instructional Duty

Section 11364 does not apply to possession of hypodermic needles or syringes for personal use if acquired from an authorized source. The defendant need only raise a reasonable doubt about whether his or her possession of these items was lawful. (See *People v. Mower* (2002) 28 Cal.4th 457, 479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].) If there is sufficient evidence, the court has a **sua sponte** duty to instruct on this defense. (See *People v. Fuentes* (1990) 224 Cal.App.3d 1041, 1045 [274 Cal.Rptr. 17] [authorized possession of hypodermic is an affirmative defense]); *People v. Mower*, at pp. 478–481 [discussing affirmative defenses generally and the burden of proof].) Give the bracketed word "unlawfully" in element 1 and the bracketed paragraph on that defense.

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11364.

- Statute Constitutional ▸ *People v. Chambers* (1989) 209 Cal.App.3d Supp. 1, 4 [257 Cal.Rptr. 289].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Unanimity ▸ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].
- Authorized Possession Defense ▸ Health & Saf. Code, § 11364(c).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare § 155.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.04[2][a] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [b] (Matthew Bender).

RELATED ISSUES

~~Marijuana~~Cannabis Paraphernalia Excluded

Possession of a device for smoking ~~marijuana~~cannabis, without more, is not a crime. (*In re Johnny O.* (2003) 107 Cal.App.4th 888, 897 [132 Cal.Rptr.2d 471].)

2748. Possession of Controlled Substance or Paraphernalia in Penal Institution (Pen. Code, § 4573.6)

The defendant is charged [in Count __] with possessing (_____ <*insert type of controlled substance*>, a controlled substance/an object intended for use to inject or consume controlled substances), in a penal institution [in violation of Penal Code section 4573.6].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] possessed (a controlled substance/an object intended for use to inject or consume controlled substances) in a penal institution [or on the grounds of a penal institution];**

2. **The defendant knew of the (substance's/object's) presence;**

[AND]

3. **The defendant knew (of the substance's nature or character as a controlled substance/that the object was intended to be used for injecting or consuming controlled substances)(;/.)**

<Give elements 4 and 5 if defendant is charged with possession of a controlled substance, not possession of paraphernalia.>

<If the controlled substance is not listed in the schedules set forth in sections 11054 through 11058 of the Health and Safety Code, give paragraph 4B and the definition of analog substance below instead of paragraph 4A.>

[4A. The controlled substance was _____ <*insert type of controlled substance*>**;**

4B. The controlled substance was an analog of _____ <*insert type of controlled substance*>**;**

AND

5. The controlled substance was a usable amount.]

[In order to prove that the defendant is guilty of this crime, the People must prove that _____<*insert name of analog drug*>** is an analog of _____**<*insert type of controlled substance*>**. An analog of a controlled substance:**

[1. Has a chemical structure substantially similar to the structure of a controlled substance(./;)]

[OR]

[(2/1). Has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the effect of a controlled substance.]]

A *penal institution* is a (state prison[,]/ [or] prison camp or farm[,]/ [or] (county/ [or] city) jail[,]/ [or] county road camp[,]/ [or] county farm[,]/ [or] place where prisoners of the state prison are located under the custody of prison officials, officers, or employees/ [or] place where prisoners or inmates are being held under the custody of a (sheriff[,]/ [or] chief of police[,]/ [or] peace officer[,]/ [or] probation officer).

[A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]

[An object is *intended to be used* for injecting or consuming controlled substances if the defendant (1) actually intended it to be so used, or (2) should have known, based on the item's objective features, that it was intended for such use.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.]

[The People allege that the defendant possessed the following items: _____ <*insert description of each controlled substance or all paraphernalia when multiple items alleged*>**. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant possessed at least one of these items and you all agree on which item (he/she) possessed.]**

<*A. Defense: Prescription*>
[The defendant is not guilty of unlawfully possessing _____ <*insert type of controlled substance*> **if (he/she) had a valid prescription for that substance written by a physician, dentist, podiatrist, or veterinarian licensed to practice in California. The People have the burden of proving beyond a reasonable doubt that the defendant did not have a valid prescription. If the People have not met this burden, you must find the defendant not guilty of possessing a controlled substance.]**

<*B. Defense: Conduct Authorized*>
[The defendant is not guilty of this offense if (he/she) was authorized to possess the (substance/item) by (the rules of the (Department of Corrections/prison/jail/institution/camp/farm/place)/ [or] the specific authorization of the (warden[,]/ [or] superintendent[,]/ [or] jailer[,]/ [or] [other] person in charge of the (prison/jail/institution/camp/farm/place)). The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to possess the (substance/item). If the People have not met this burden, you must find the defendant not guilty of this offense.]

New January 2006; Revised October 2010, February 2014, September 2017, September 2018

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the defendant is charged with possessing a controlled substance, give elements 1 through 5. If the defendant is charged with possession of paraphernalia, give elements 1 through 3 only.

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483];

People v. Rowland (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed," inserting the items alleged.

Give the bracketed sentence defining "intended to be used" if there is an issue over whether the object allegedly possessed by the defendant was drug paraphernalia. (See *People v. Gutierrez* (1997) 52 Cal.App.4th 380, 389 [60 Cal.Rptr.2d 561].)

The prescription defense is codified in Health & Safety Code sections 11350 and 11377. This defense does apply to a charge of possession of a controlled substance in a penal institution. (*People v. Fenton* (1993) 20 Cal.App.4th 965, 969 [25 Cal.Rptr.2d 52].) The defendant need only raise a reasonable doubt about whether his possession of the drug was lawful because of a valid prescription. (See *People v. Mower* (2002) 28 Cal.4th 457, 479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].) If there is sufficient evidence of a prescription, give the bracketed "unlawfully" in element 1 and the bracketed paragraph headed "Defense: Prescription."

If there is sufficient evidence that the defendant was authorized to possess the substance or item, give the bracketed word "unlawfully" in element 1 and the bracketed paragraph headed "Defense: Conduct Authorized." (*People v. George* (1994) 30 Cal.App.4th 262, 275–276 [35 Cal.Rptr.2d 750]; *People v. Cardenas* (1997) 53 Cal.App.4th 240, 245–246 [61 Cal.Rptr.2d 583].)

AUTHORITY

- Elements ▸ Pen. Code, § 4573.6; *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717]; *People v. Carrasco* (1981) 118 Cal.App.3d 936, 944–948 [173 Cal.Rptr. 688].
- Knowledge ▸ *People v. Carrasco, supra,* 118 Cal.App.3d at pp. 944–947.
- Usable Amount ▸ *People v. Carrasco, supra,* 118 Cal.App.3d at p. 948.
- Prescription Defense ▸ Health & Saf. Code, §§ 11350, 11377.
- Prescription ▸ Health & Saf. Code, §§ 11027, 11164, 11164.5.
- Persons Authorized to Write Prescriptions ▸ Health & Saf. Code, § 11150.
- Prescription Defense Applies ▸ *People v. Fenton* (1993) 20 Cal.App.4th 965, 969 [25 Cal.Rptr.2d 52].
- Authorization Is Affirmative Defense ▸ *People v. George* (1994) 30 Cal.App.4th 262, 275–276 [35 Cal.Rptr.2d 750]; *People v. Cardenas, supra,* 53 Cal.App.4th at pp. 245–246.

- Jail Defined ‣ *People v. Carter* (1981) 117 Cal.App.3d 546, 550 [172 Cal.Rptr. 838].
- Knowledge of Location as Penal Institution ‣ *People v. Seale* (1969) 274 Cal.App.2d 107, 111 [78 Cal.Rptr. 811].
- "Adjacent to" and "Grounds" Not Vague ‣ *People v. Seale*, *supra*, 274 Cal.App.2d at pp. 114–115.
- Constructive vs. Actual Possession ‣ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Unanimity ‣ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].
- Definition of Analog Controlled Substance ‣ Health & Saf. Code, § 11401; *People v. Davis* (2013) 57 Cal.4th 353, 357, fn. 2 [159 Cal.Rptr.3d 405, 303 P.3d 1179].
- No Finding Necessary for "Expressly Listed" Controlled Substance ‣ *People v. Davis, supra,* 57 Cal.4th at p. 362, fn. 5.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 161.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 94, *Prisoners' Rights,* § 94.04 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01 (Matthew Bender).

RELATED ISSUES

Inmate Transferred to Mental Hospital

A prison inmate transferred to a mental hospital for treatment under Penal Code section 2684 is not "under the custody of prison officials." (*People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, 1002 [9 Cal.Rptr.3d 745].) However, the inmate is "held under custody by peace officers within the facility." (*Id.* at p. 1003.) Thus, Penal Code section 4573.6 does apply. *(Ibid.)*

Use of Controlled Substance Insufficient to Prove Possession

" '[*P*]*ossession*,' as used in that section, does not mean 'use' and mere evidence of use (or being under the influence) of a proscribed substance cannot circumstantially prove its '*possession*.' " (*People v. Spann* (1986) 187 Cal.App.3d 400, 408 [232 Cal.Rptr. 31] [italics in original]; see also *People v. Carrasco, supra*, 118 Cal.App.3d at p. 947.)

Posting of Prohibition

Penal Code section 4573.6 requires that its "prohibitions and sanctions" be posted on the grounds of the penal institution. (Pen. Code, § 4573.6.) However, that requirement is not an element of the offense, and the prosecution is not required to prove compliance. (*People v. Gutierrez* (1997) 52 Cal.App.4th 380, 389 [60 Cal.Rptr.2d 561]; *People v. Cardenas, supra*, 53 Cal.App.4th at p. 246.)

Possession of Multiple Items at One Time

"[C]ontemporaneous possession in a state prison of two or more discrete controlled substances . . . at the same location constitutes but one offense under Penal Code section 4573.6." (*People v. Rouser* (1997) 59 Cal.App.4th 1065, 1067 [69 Cal.Rptr.2d 563].)

Administrative Punishment Does Not Bar Criminal Action

"The protection against multiple punishment afforded by the Double Jeopardy Clause . . . is not implicated by prior prison disciplinary proceedings . . . ." (*Taylor v. Hamlet* (N.D. Cal. 2003) 2003 U.S. Dist. LEXIS 19451; see also *People v. Ford* (1959) 175 Cal.App.2d 37, 39 [345 P.2d 354] [Pen. Code, § 654 not implicated].)

Medical Use of ~~Marijuana~~Cannabis

The medical ~~marijuana~~ cannabis defense provided by Health and Safety Code section 11362.5 is not available to a defendant charged with violating Penal Code section 4573.6. (*Taylor v. Hamlet, supra,* 2003 U.S. Dist. LEXIS 19451.) However, the common law defense of medical necessity may be available. *(Ibid.)*

2749–2759. Reserved for Future Use

3403. Necessity

The defendant is not guilty of _____ <*insert crime[s]*> if (he/she) acted because of legal necessity.

In order to establish this defense, the defendant must prove that:

1. **(He/She) acted in an emergency to prevent a significant bodily harm or evil to (himself/herself/ [or] someone else);**

2. **(He/She) had no adequate legal alternative;**

3. **The defendant's acts did not create a greater danger than the one avoided;**

4. **When the defendant acted, (he/she) actually believed that the act was necessary to prevent the threatened harm or evil;**

5. **A reasonable person would also have believed that the act was necessary under the circumstances;**

AND

6. **The defendant did not substantially contribute to the emergency.**

The defendant has the burden of proving this defense by a preponderance of the evidence. This is a different standard of proof than proof beyond a reasonable doubt. To meet the burden of proof by a preponderance of the evidence, the defendant must prove that it is more likely than not that each of the six listed items is true.

New January 2006; Revised April 2008, September 2018

BENCH NOTES

Instructional Duty

The court must instruct on a defense when the defendant requests it and there is substantial evidence supporting the defense. The court has a **sua sponte** duty to instruct on a defense if there is substantial evidence supporting it and either the

defendant is relying on it or it is not inconsistent with the defendant's theory of the case.

When the court concludes that the defense is supported by substantial evidence and is inconsistent with the defendant's theory of the case, however, it should ascertain whether defendant wishes instruction on this alternate theory. (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 389–390 [88 Cal.Rptr.2d 111]; *People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Substantial evidence means evidence of necessity, which, if believed, would be sufficient for a reasonable jury to find that the defendant has shown the defense to be more likely than not.

Related Instructions

If the threatened harm was immediate and accompanied by a demand to commit the crime, the defense of duress may apply. (See CALCRIM No, 3402, *Duress or Threats*.)

AUTHORITY

- Instructional Requirements ▸ *People v. Pena* (1983) 149 Cal.App.3d Supp. 14 [197 Cal.Rptr. 264]; *People v. Pepper* (1996) 41 Cal.App.4th 1029, 1035 [48 Cal.Rptr.2d 877]; *People v. Kearns* (1997) 55 Cal.App.4th 1128, 1135–1136 [64 Cal.Rptr. 2d 654].
- Burden of Proof ▸ *People v. Waters* (1985) 163 Cal.App.3d 935, 938 [209 Cal.Rptr. 661]; *People v. Condley* (1977) 69 Cal.App.3d 999, 1008 [138 Cal.Rptr. 515].
- Difference Between Necessity and Duress ▸ *People v. Heath* (1989) 207 Cal.App.3d 892, 897–902 [255 Cal.Rptr. 120].

Secondary Sources

1 Witkin and Epstein, California Criminal Law (3d ed. 2000) Defenses, §§ 55–60.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* §§ 73.05[2], 73.18 (Matthew Bender).

RELATED ISSUES

Duress Distinguished

Although a defendant's evidence may raise both necessity and duress defenses, there is an important distinction between the two concepts. With necessity, the threatened harm is in the immediate future, thereby permitting a defendant to balance alternative courses of conduct. (*People v. Condley* (1977) 69 Cal.App.3d 999, 1009–1013 [138 Cal.Rptr. 515].) Necessity does not negate any element of the crime, but rather represents a public policy decision not to punish a defendant despite proof of the crime. (*People v. Heath* (1989) 207 Cal.App.3d 892, 901 [255 Cal.Rptr. 120].) The duress defense, on the other hand, does negate an element of the crime. The defendant does not have the time to form the criminal intent because of the immediacy of the threatened harm. (*Ibid.*)

Abortion Protests

The defense of necessity is not available to one who attempts to interfere with another person's exercise of a constitutional right (e.g., demonstrators at an abortion clinic). (*People v. Garziano* (1991) 230 Cal.App.3d 241, 244 [281 Cal.Rptr. 307].)

Economic Necessity

Necessity caused by economic factors is valid under the doctrine. A homeless man was entitled to an instruction on necessity as a defense to violating an ordinance prohibiting sleeping in park areas. Lack of sleep is arguably a significant evil and his lack of economic resources prevented a legal alternative to sleeping outside. (*In re Eichorn* (1998) 69 Cal.App.4th 382, 389–391 [81 Cal.Rptr.2d 535].)

Medical Necessity

There is a common law and statutory defense of medical necessity. The common law defense contains the same requirements as the general necessity defense. (See *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1538 [66 Cal.Rptr.2d 559].) The statutory defense relates specifically to the use of ~~marijuana~~ cannabis and is based on Health and Safety Code section 11362.5, the "Compassionate Use Act," but see *Gonzales v. Raich* (2005) 545 U.S. 1 [125 S.Ct. 2195, 162 L.Ed.2d 1] [medical necessity defense not available].

3406. Mistake of Fact

The defendant is not guilty of _____ <*insert crime[s]*> **if (he/she) did not have the intent or mental state required to commit the crime because (he/she) [reasonably] did not know a fact or [reasonably and] mistakenly believed a fact.**

If the defendant's conduct would have been lawful under the facts as (he/she) [reasonably] believed them to be, (he/she) did not commit _____ <*insert crime[s]*>**.**

If you find that the defendant believed that _____ <*insert alleged mistaken facts*> **[and if you find that belief was reasonable], (he/she) did not have the specific intent or mental state required for _____** <*insert crime[s]*>**.**

If you have a reasonable doubt about whether the defendant had the specific intent or mental state required for _____ <*insert crime[s]*>**, you must find (him/her) not guilty of (that crime/those crimes).**

New January 2006; Revised April 2008, December 2008, August 2014, September 2018

BENCH NOTES

Instructional Duty

The court must instruct on a defense when the defendant requests it and there is substantial evidence supporting the defense. The court has a **sua sponte** duty to instruct on a defense if there is substantial evidence supporting it and either the defendant is relying on it or it is not inconsistent with the defendant's theory of the case.

When the court concludes that the defense is supported by substantial evidence and is inconsistent with the defendant's theory of the case, however, it should ascertain whether defendant wishes instruction on this alternate theory. (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 389–390 [88 Cal.Rptr.2d 111]; *People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Substantial evidence means evidence of a defense, which, if believed, would be sufficient for a reasonable jury to find a reasonable doubt as to the defendant's

guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982–983 [38 Cal.Rptr.3d 624, 127 P.3d 40].)

If the defendant is charged with a general intent crime, the trial court must instruct with the bracketed language requiring that defendant's belief be both actual and reasonable.

If the mental state element at issue is either specific criminal intent or knowledge, do not use the bracketed language requiring the belief to be reasonable. (*People v. Reyes* (1997) 52 Cal.App.4th 975, 984 & fn. 6 [61 Cal.Rptr.2d 39]; *People v. Russell* (2006) 144 Cal.App.4th 1415, 1425–1426 [51 Cal.Rptr.3d 263].)

Mistake of fact is not a defense to the following crimes under the circumstances described below:

1. Involuntary manslaughter (*People v. Velez* (1983) 144 Cal.App.3d 558, 565–566 [192 Cal.Rptr. 686] [mistake of fact re whether gun could be fired]).
2. Furnishing ~~marijuana~~cannabis to a minor (Health & Saf. Code, § 11352; *People v. Lopez* (1969) 271 Cal.App.2d 754, 760–762 [77 Cal.Rptr. 59]).
3. Selling narcotics to a minor (Health & Saf. Code, § 11353; *People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454] [specific intent for the crime of selling narcotics to a minor is the intent to sell cocaine, not to sell it to a minor]).
4. Aggravated kidnapping of a child under the age of 14 (Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206]).
5. Unlawful sexual intercourse or oral copulation by person 21 or older with minor under the age of 16 (Pen. Code, §§ 261.5(d), 288a(b)(2); *People v. Scott* (2000) 83 Cal.App.4th 784, 800–801 [100 Cal.Rptr.2d 70]).
6. Lewd and lascivious conduct with a child under the age of 14 (Pen. Code, § 288(a); *People v. Olsen* (1984) 36 Cal.3d 638, 645–646 [205 Cal.Rptr. 492, 685 P.2d 52]).

AUTHORITY

- Instructional Requirements. ▸ Pen. Code, § 26(3).
- Burden of Proof. ▸ *People v. Mayberry* (1975) 15 Cal.3d 143, 157 [125 Cal.Rptr 745, 542 P.2d 1337].
- This Defense Applies to Attempted Lewd and Lascivious Conduct With Minor Under 14. ▸ *People v. Hanna* (2013) 218 Cal.App.4th 455, 461 [160 Cal.Rptr.3d 210].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, § 39.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.06 (Matthew Bender).

RELATED ISSUES

Mistake of Fact Based on Involuntary Intoxication

A mistake of fact defense can be based on involuntary intoxication. (*People v. Scott* (1983) 146 Cal.App.3d 823, 829–833 [194 Cal.Rptr. 633].) In *Scott*, the court held that the defendant was entitled to an instruction on mistake of fact, as a matter of law, where the evidence established that he unknowingly and involuntarily ingested a hallucinogen. As a result he acted under the delusion that he was a secret agent in a situation where it was necessary to steal vehicles in order to save his own life and possibly that of the President. The court held that although defendant's mistake of fact was irrational, it was reasonable because of his delusional state and had the mistaken facts been true, his actions would have been justified under the doctrine of necessity. The court also stated that mistake of fact would not have been available if defendant's mental state had been caused by voluntary intoxication. (*Id.* at pp. 829–833; see also *People v. Kelly* (1973) 10 Cal.3d 565, 573 [111 Cal.Rptr. 171, 516 P.2d 875] [mistake of fact based on voluntary intoxication is not a defense to a general intent crime].)

Mistake of Fact Based on Mental Disease

Mistake of fact is not a defense to general criminal intent if the mistake is based on mental disease. (*People v. Gutierrez* (1986) 180 Cal.App.3d 1076, 1084 [225 Cal.Rptr. 885]; see *People v. Castillo* (1987) 193 Cal.App.3d 119, 124–125 [238 Cal.Rptr. 207].) In *Gutierrez*, the defendant was charged with inflicting cruel injury on a child, a general intent crime, because she beat her own children under the delusion that they were evil birds she had to kill. The defendant's abnormal mental state was caused in part by mental illness. (*People v. Gutierrez, supra,* 180 Cal.App.3d at pp. 1079–1080.) The court concluded that evidence of her mental illness was properly excluded at trial because mental illness could not form the basis of her mistake of fact defense. (*Id.* at pp. 1083–1084.)

3412. Compassionate Use (Health & Saf. Code, § 11362.5)

Possession or cultivation of ~~marijuana~~cannabis is lawful if authorized by the Compassionate Use Act. The Compassionate Use Act allows a person to possess or cultivate ~~marijuana~~cannabis (for personal medical purposes/ [or] as the primary caregiver of a patient with a medical need) when a physician has recommended [or approved] such use. The amount of ~~marijuana~~cannabis possessed or cultivated must be reasonably related to the patient's current medical needs.

The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to possess or cultivate ~~marijuana~~cannabis for medical purposes. If the People have not met this burden, you must find the defendant not guilty of this crime.

[A *primary caregiver* is someone who has consistently assumed responsibility for the housing, health, or safety of a patient who may legally possess or cultivate ~~marijuana~~cannabis.]

New February 2015; Revised September 2018

BENCH NOTES

Instructional Duty

Pursuant to Health & Saf. Code, § 11362.5, defendants may raise a medical ~~marijuana~~cannabis defense in appropriate cases. The burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that possession was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jones* (2003) 112 Cal.App.4th 341, 350 [4 Cal.Rptr.3d 916] [error to exclude defense where defendant's testimony raised reasonable doubt about physician approval]; see also *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1441 [7 Cal.Rptr.3d 226] [defendant need not establish "medical necessity"].)

If the evidence shows that a physician may have "approved" but not "recommended" the ~~marijuana~~cannabis use, give the bracketed phrase "or approved" in the first paragraph of this instruction. (*People v. Jones, supra,* 112 Cal.App.4th at p. 347 ["approved" distinguished from "recommended"].)

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11362.5; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Amount Must Be Reasonably Related to Patient's Medical Needs ▸ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §136.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[3] (Matthew Bender)

3413. Collective or Cooperative Cultivation Defense (Health & Saf. Code, § 11362.775)

(Planting[,] [or]/ cultivating[,] [or]/ harvesting[,] [or]/ drying[,] [or]/ processing) ~~marijuana~~cannabis is lawful if authorized by the Medical Marijuana Program Act. The Medical Marijuana Program Act allows qualified patients [and their designated primary caregivers] to associate within the State of California to collectively or cooperatively cultivate ~~marijuana~~cannabis for medical purposes, for the benefit of its members, but not for profit.

In deciding whether a collective meets these legal requirements, consider the following factors:

1. **The size of the collective's membership;**
2. **The volume of purchases from the collective;**
3. **The level of members' participation in the operation and governance of the collective;**
4. **Whether the collective was formally established as a nonprofit organization;**
5. **Presence or absence of financial records;**
6. **Accountability of the collective to its members;**
7. **Evidence of profit or loss.**

There is no limit on the number of persons who may be members of a collective.

Every member of the collective does not need to actively participate in the cultivation process. It is enough if a member provides financial support by purchasing ~~marijuana~~cannabis from the collective.

A *qualified patient* is someone for whom a physician has previously recommended or approved the use of ~~marijuana~~cannabis for medical purposes. [¶]

***Collectively* means involving united action or cooperative effort of all members of a group.**

***Cooperatively* means working together or using joint effort toward a common end.**

Cultivate **means to foster the growth of a plant.**

[A *primary caregiver* is someone who has consistently assumed responsibility for the housing, health, or safety of a patient who may legally possess or cultivate ~~marijuana~~cannabis.]

The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to (plant[,] [or]/ cultivate[,] [or]/ harvest[,] [or]/ dry[,] [or]/ process) ~~marijuana~~cannabis for medical purposes. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New February 2015; Revised August 2015, September 2018

BENCH NOTES

Instructional Duty

A collective or cooperative cultivation defense under the Medical Marijuana Program Act may be raised to certain ~~marijuana~~cannabis charges. (See Health & Saf. Code, § 11362.775) The burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that possession was lawful. (*People v. Jackson* (2012) 210 Cal.App.4th 525, 529-531, 538-539 [148 Cal.Rptr.3d 375].

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11362.775.
- Factors To Consider ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525 [148 Cal.Rptr.3d 375]..
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061]; *People v. Mitchell* (2014) 225 Cal.App.4th 1189, 1205-1206 [170 Cal.Rptr.3d 825].
- Defendant's Burden of Proof on Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 529-531, 538-539 [148 Cal.Rptr.3d 375].
- All Members Need Not Participate in Cultivation ▸ *People v. Anderson* (2015) 232 Cal.App.4th 1259 [182 Cal.Rptr.3d 276].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 147.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01 (Matthew Bender).

3414–3424. Reserved for Future Use

2360. Transporting or Giving Away Marijuana: Not More Than 28.5 Grams—Misdemeanor (Health & Saf. Code, § 11360(b))

The defendant is charged [in Count ___] with [unlawfully] (giving away/transporting for sale) 28.5 grams or less of marijuana, a controlled substance [in violation of Health and Safety Code section 11360(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (gave away/transported for sale) a controlled substance;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as a controlled substance;**

4. **The controlled substance was marijuana;**

AND

5. **The marijuana was in a usable amount but not more than 28.5 grams in weight.**

A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]

[A person *transports* something if he or she carries or moves it for sale from one location to another, even if the distance is short.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) (gave away/transported).]

[A person does not have to actually hold or touch something to (give it away/transport it). It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

New January 2006; Revised April 2010, October 2010, February 2015, August 2016

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)

Defenses—Instructional Duty

If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

If the medical marijuana instructions are given, then also give the bracketed word "unlawfully" in the first paragraph and element 1.

Related Instructions

Use this instruction when the defendant is charged with transporting or giving away 28.5 grams or less of marijuana. For offering to transport or give away 28.5 grams or less of marijuana, use CALCRIM No. 2362, *Offering to Transport or Give Away Marijuana: Not More Than 28.5 Grams—Misdemeanor*. For transporting or giving away more than 28.5 grams, use CALCRIM No. 2361, *Transporting or Giving Away Marijuana: More Than 28.5 Grams*. For offering to transport or give away more than 28.5 grams of marijuana, use CALCRIM No. 2363, *Offering to Transport or Give Away Marijuana: More Than 28.5 Grams*.

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360(b).
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Medical Marijuana ▸ Health & Saf. Code, § 11362.5.
- Primary Caregiver ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ▸ *People v. Mentch* (2008) 45 Cal.4th 274, 292–294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Compassionate Use Defense to Transportation ▸ *People v. Wright* (2006) 40 Cal.4th 81, 87–88 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 [66 Cal.Rptr.2d 559].
- Burden of Proof for Defense of Medical Use ▸ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Usable Amount ▸ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Medical Marijuana Program Act Defense ▸ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538–539 [148 Cal.Rptr.3d 375].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[c], [g], [3][a], [a.1] (Matthew Bender).

RELATED ISSUES

Transportation

Transportation does not require personal possession by the defendant. *(Ibid.)* "Proof of his knowledge of the character and presence of the drug, together with his control over the vehicle, is sufficient to establish his guilt . . . ." (*Id*. at pp. 135–136.) Transportation of a controlled substance includes transporting by riding a bicycle (*People v. LaCross* (2001) 91 Cal.App.4th 182, 187 [109 Cal.Rptr.2d 802]) or walking (*People v. Ormiston* (2003) 105 Cal.App.4th 676, 685 [129 Cal.Rptr.2d 567]). The controlled substance must be moved "from one location to another," but the movement may be minimal. (*Id.* at p. 684.)

Medical Marijuana Not a Defense to Giving Away

The medical marijuana defense provided by Health and Safety Code section 11362.5 is not available to a charge of sales under Health and Safety Code section 11360. (*People v. Galambos* (2002) 104 Cal.App.4th 1147, 1165–1167 [128 Cal.Rptr.2d 844]; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389 [70 Cal.Rptr.2d 20].) The defense is not available even if the marijuana is provided to someone permitted to use marijuana for medical reasons (*People v. Galambos, supra,* 104 Cal.App.4th at pp. 1165–1167) or if the marijuana is provided free of charge (*People ex rel. Lungren v. Peron, supra,* 59 Cal.App.4th at p. 1389).

2362. Offering to Transport or Give Away Marijuana: Not More Than 28.5 Grams—Misdemeanor (Health & Saf. Code, § 11360(b))

The defendant is charged [in Count ___] with [unlawfully] (offering to give away/offering to transport for sale/attempting to transport for sale) 28.5 grams or less of marijuana, a controlled substance [in violation of Health and Safety Code section 11360(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] (offered to give away/offered to transport for sale/attempted to transport for sale) marijuana, a controlled substance, in an amount weighing 28.5 grams or less;**

AND

2. **When the defendant made the (offer/attempt), (he/she) intended to (give away/transport for sale) the controlled substance.**

[*Marijuana* means all or part of the *Cannabis sativa L.* plant, whether growing or not, including the seeds and resin extracted from any part of the plant. [It also includes every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.] [It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant, which is incapable of germination.]]

[A person *transports* something if he or she carries or moves it for sale from one location to another, even if the distance is short.]

[The People do not need to prove that the defendant actually possessed the controlled substance.]

New January 2006; Revised April 2010, February 2015, August 2016

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When instructing on the definition of "marijuana," the court may choose to give just the first bracketed sentence or may give the first bracketed sentence with either or both of the bracketed sentences following. The second and third sentences should be given if requested and relevant based on the evidence. (See Health & Saf. Code, § 11018 [defining marijuana].)

Also give CALCRIM No. 460, *Attempt Other Than Attempted Murder*, if the defendant is charged with attempt to transport.

Defenses—Instructional Duty
If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

If the medical marijuana instructions are given, then, in element 1, also give the bracketed word "unlawfully."
Related Instructions
Use this instruction when the defendant is charged with offering to transport or give away 28.5 grams or less of marijuana. For transporting or giving away 28.5 grams or less of marijuana, use CALCRIM No. 2360, *Transporting or Giving Away Marijuana: Not More Than 28.5 Grams—Misdemeanor*. For offering to transport or give away more than 28.5 grams of marijuana, use CALCRIM No. 2363, *Offering to Transport or Give Away Marijuana: More Than 28.5 Grams*. For transporting or giving away more than 28.5 grams, use CALCRIM No. 2361, *Transporting or Giving Away Marijuana: More Than 28.5 Grams*.

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11360(b).

- Knowledge ‣ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].
- Specific Intent ‣ *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].
- Medical Marijuana ‣ Health & Saf. Code, § 11362.5.
- Compassionate Use Defense to Transportation ‣ *People v. Wright* (2006) 40 Cal.4th 81, 87–88 [51 Cal.Rptr.3d 80, 146 P.3d 531]; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 [66 Cal.Rptr.2d 559].
- Burden of Proof for Defense of Medical Use ‣ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Primary Caregiver ‣ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ‣ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).
- Medical Marijuana Program Act Defense ‣ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a], [g], [j], [3][a], [a.1] (Matthew Bender).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 2360, *Transporting or Giving Away Marijuana: Not More Than 28.5 Grams—Misdemeanor*.

2377. Simple Possession of Concentrated Cannabis (Health & Saf. Code, § 11357(a))

The defendant is charged [in Count ___] with [unlawfully] possessing concentrated cannabis, a controlled substance [in violation of Health and Safety Code section 11357(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant [unlawfully] possessed concentrated cannabis;**

2. **The defendant knew of its presence;**

3. **The defendant knew of the substance's nature or character as concentrated cannabis;**

AND

4. **The concentrated cannabis was in a usable amount.**

A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

***Concentrated cannabis* means the separated resin, whether crude or purified, from the cannabis plant.**

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy concentrated cannabis does not, by itself, mean that a person has control over that substance.]

New January 2006; Revised June 2007, February 2015, August 2015

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision(c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Defenses—Instructional Duty
If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

"[C]oncentrated cannabis or hashish is included within the meaning of 'marijuana' as the term is used in the Compassionate Use Act of 1996." (86 Ops.Cal.Atty.Gen. 180, 186 (2003).)

If the medical marijuana instructions are given, then, in element 1, also give the bracketed word "unlawfully."

AUTHORITY

- Elements ▸ Health & Saf. Code, § 11357(a); *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717].
- "Concentrated Cannabis" Defined ▸ Health & Saf. Code, § 11006.5.
- Knowledge ▸ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].

- Constructive vs. Actual Possession ‣ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Usable Amount ‣ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Medical Marijuana ‣ Health & Saf. Code, § 11362.5.
- Burden of Proof for Defense of Medical Use ‣ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Frazier* (2005) 128 Cal.App.4th 807, 820–821 [27 Cal.Rptr.3d 336].
- Amount Must Be Reasonably Related to Patient's Medical Needs ‣ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ‣ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant's Burden of Proof on Compassionate Use Defense ‣ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.).Medical Marijuana Program Act Defense ‣ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 85-113, 136-151
.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.01[1][a]–[d], [3][a], [a.1] (Matthew Bender).

3550. Pre-Deliberation Instructions

When you go to the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard.

It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict if you can. Each of you must decide the case for yourself, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you become convinced that you are wrong. But do not change your mind just because other jurors disagree with you.

Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other.

As I told you at the beginning of the trial, do not talk about the case or about any of the people or any subject involved in it with anyone, including, but not limited to, your spouse or other family, or friends, spiritual leaders or advisors, or therapists. You must discuss the case only in the jury room and only when all jurors are present. Do not discuss your deliberations with anyone. Do not communicate using: _____<*insert currently popular social media*> **during your deliberations**.

It is very important that you not use the Internet (, a dictionary/[, or _____<*insert other relevant source of information*>**) in any way in connection with this case during your deliberations.**

[During the trial, several items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. (These exhibits will be sent into the jury room with you when you begin to deliberate./ If you wish to see any exhibits, please request them in writing.)]

If you need to communicate with me while you are deliberating, send a note through the bailiff, signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. If you have questions, I will talk with the attorneys before I answer so it may take some time. You should

continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else how the vote stands on the (question of guilt/[or] issues in this case) unless I ask you to do so.

Your verdict [on each count and any special findings] must be unanimous. This means that, to return a verdict, all of you must agree to it. [Do not reach a decision by the flip of a coin or by any similar act.]

<During a retrial, give the following paragraph on request to inform jury about prior proceedings without introducing extraneous matters>

[Sometimes issues are tried in separate trials. The only issue in this trial is whether the People have proved the charge[s] of _____ *<insert description of charge[s]>* **[in Count[s] _____]. Do not speculate about whether the defendant was already found guilty for (his/her) conduct or may be found guilty in the future in another trial. Do not consider any potential punishment.]**

It is not my role to tell you what your verdict should be. [Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.]

You must reach your verdict without any consideration of punishment.

You will be given [a] verdict form[s]. As soon as all jurors have agreed on a verdict, the foreperson must date and sign the appropriate verdict form[s] and notify the bailiff. [If you are able to reach a unanimous decision on only one or only some of the (charges/ [or] defendants), fill in (that/those) verdict form[s] only, and notify the bailiff.] Return any unsigned verdict form.

New January 2006; Revised April 2008, October 2010, April 2011, September 2018

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct that the jury's verdict must be unanimous. Although there is no sua sponte duty to instruct on the other topics relating to deliberations, there is authority approving such instructions. (See *People v. Gainer* (1977) 19 Cal.3d 835, 856 [139 Cal.Rptr. 861, 566 P.2d 997]; *People v. Selby* (1926) 198 Cal. 426, 439 [245 P. 426]; *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].)

If the court automatically sends exhibits into the jury room, give the bracketed sentence that begins with "These exhibits will be sent into the jury room." If not, give the bracketed phrase that begins with "You may examine whatever exhibits you think."

Give the bracketed sentence that begins with "Do not take anything I said or did during the trial" unless the court will be commenting on the evidence. (See Pen. Code, §§ 1127, 1093(f).)

Give the bracketed paragraph that begins with "Sometimes issues are tried in separate trials" if requested. (*People v. Hicks* (2017) 4 Cal.5th 203, 205 [226 Cal.Rptr.3d 565, 407 P.3d 409].)

AUTHORITY

- Exhibits ▸ Pen. Code, § 1137.
- Questions ▸ Pen. Code, § 1138.
- Verdict Forms ▸ Pen. Code, § 1140.
- Unanimous Verdict ▸ Cal. Const., art. I, § 16; *People v. Howard* (1930) 211 Cal. 322, 325 [295 P. 333]; *People v. Kelso* (1945) 25 Cal.2d 848, 853–854 [155 P.2d 819]; *People v. Collins* (1976) 17 Cal.3d 687, 692 [131 Cal.Rptr. 782, 552 P.2d 742].
- Duty to Deliberate ▸ *People v. Gainer* (1977) 19 Cal.3d 835, 856 [139 Cal.Rptr. 861, 566 P.2d 997].
- Judge's Conduct as Indication of Verdict ▸ *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- Keep an Open Mind ▸ *People v. Selby* (1926) 198 Cal. 426, 439 [245 P. 426].
- Do Not Consider Punishment ▸ *People v. Nichols* (1997) 54 Cal.App.4th 21, 24 [62 Cal.Rptr.2d 433].
- Hung Jury ▸ *People v. Gainer* (1977) 19 Cal.3d 835, 850-852 [139 Cal.Rptr. 861, 566 P.2d 997]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1118-1121 [117 Cal.Rptr.2d 715].
- This Instruction Upheld ▸ *People v. Santiago* (2010) 178 Cal.App.4th 1471, 1475-1476 [101 Cal.Rptr.3d 257].
- Special Instruction for Retrial Jury ▸ *People v. Hicks* (2017) 4 Cal.5th 203, 205 [226 Cal.Rptr.3d 565, 407 P.3d 409].

Secondary Sources

5 Witkin & Epstein, California Criminal Law (3d ed. 2000), §§ 643-644.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02, 85.03[1], 85.05[1] (Matthew Bender).

RELATED ISSUES

Admonition Not to Discuss Case with Anyone

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court's admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

> It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror during deliberations . . . . may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses, spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(*Id.* at p. 306, fn. 11.)

The court may, at its discretion, add the suggested language to the fourth paragraph of this instruction.

3551–3574. Reserved for Future Use

Item number:08

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Rules and Forms: Civil Form for Gender Discrimination Notice

Rules, Forms, Standards, or Statutes Affected
Adopt form GDC-001

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 13, 2018

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee proposes adopting a new form to comply with legislation requiring 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. 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).

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2019, adopt *Advisory Notice to Defendant* (form GDC-001), which, under

statute, is a written advisory notice to be used by a plaintiff's attorney when making a claim for gender discrimination in pricing.

The new form is attached at pages 4–5.

Relevant Previous Council Action

The Judicial Council has taken no previous action in this area.

Analysis/Rationale

Civil Code section 55.62 pertains to claims alleging gender discrimination in pricing of specified services: tailors or businesses providing aftermarket clothing alterations; barbers or hair salons; and dry cleaners and laundries. Section 55.62(c) 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, which include the requirement that a notice accompany each demand letter or complaint. 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*." On the proposed form, the name of the website was changed to the "judicial branch website" for accuracy and conformance to Judicial Council style. In addition to English, the form will be made available in Spanish, Chinese, Vietnamese, and Korean, as required by section 55.62.

Policy implications

The advisory committee did not identify any policy implications, as the form and its contents are required by legislation.

Comments

The proposal circulated for public comment from April 9 to June 8, 2018. Two comments were submitted. The Superior Court of San Diego County and the Orange County Bar Association agreed with the proposal; the court added that it appropriately addressed the stated purpose.

Alternatives considered

The advisory committee did not consider any alternatives because this notice is required by statute.

Fiscal and Operational Impacts

There are no 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.

Attachments

1. Form GDC-001, at pages 4–5
2. Chart of comments, at page 6

ADVISORY NOTICE TO DEFENDANT

GDC-001

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUSINESSES

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.*

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

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; and 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.)

SPR18-07
Civil Forms: Gender Discrimination Notice (Adopt form GDC-001)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of San Diego County by Mike Roddy Executive Officer San Diego, CA	A	Q: Does the proposal appropriately address the stated purpose? Yes.	The committee thanks the commentator.
2.	Orange County Bar Association by Nikki P. Miliband President Newport Beach, CA	A	No additional comment was submitted.	The committee thanks the commentator.

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Rules and Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer

Rules, Forms, Standards, or Statutes Affected
Revise forms CIV-140 and CIV-141

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 13, 2018

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

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 extension of time if the parties are unable to meet and confer within the time allowed. The Civil and Small Claims Advisory Committee recommends revising two optional forms, one to implement the meet-and-confer requirements and the other to obtain a 30-day extension of time to file a motion to strike a pleading or a motion for judgment on the pleadings if the parties are unable to meet before the due date of the motion.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise *Declaration of Demurring or Moving Party Regarding Meet and Confer* (form CIV-140) and *Declaration of Demurring or Moving Party in Support of Automatic Extension* (form CIV-141) to add a motion to strike a pleading and a motion for judgment on the pleadings to the items that require a meet-and-confer session before filing in a trial court.

The revised forms are attached at pages 6–7.

Relevant Previous Council Action

Effective January 1, 2017, the Judicial Council approved optional forms CIV-140 and CIV-141 to implement statutory requirements.

Analysis/Rationale

Effective January 1, 2016, Code of Civil Procedure section 430.41, which addresses the filing of demurrers, was enacted. It requires that, before filing a demurrer, the demurring party meet and confer with the party who filed the pleading that is subject to demurrer. It also provides that, if the parties are unable to meet and confer at least five days before the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading. The Judicial Council adopted two optional forms to implement these statutory requirements. *Declaration of Demurring or Moving Party Regarding Meet and Confer* (form CIV-140) provides declarations to demonstrate compliance with the meet-and-confer requirements of Code of Civil Procedure section 430.41(a)(3) and *Declaration of Demurring or Moving Party in Support of Automatic Extension* (form CIV-141) provides declarations for a demurring party to use when seeking an automatic 30-day extension of time to file a demurrer.

New legislation enacted in 2017, Assembly Bill 644 (Stats. 2017, ch. 273), added Code of Civil Procedure[1] sections 435.5 and 439, until January 1, 2021, to establish requirements similar to those in section 430.41 that before filing a motion to strike or a motion for judgment on the pleadings, respectively, the moving party must meet and confer with the party who filed the pleading that is subject to the motion to determine 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 take place 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 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 a motion for judgment on the pleadings must be filed." (*Ibid.*)

The advisory committee recommends revising existing forms CIV-140 and CIV-141 to implement the 2017 legislation. The revised forms would serve the same purposes—a demonstration of compliance with new meet-and-confer requirements and an automatic

[1] All further statutory references are to the Code of Civil Procedure.

extension of time for filing—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.

***Declaration of Demurring or Moving Party Regarding Meet and Confer* (form CIV-140)**

The revised 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.

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 begin, "At least five days before the date a responsive pleading was due to be filed."

***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 has been 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.[2] 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), 439(a)(2).)

Policy implications

The policy implications of this proposal are limited. Holding a meet-and-confer session before filing a motion to strike or a motion for judgment on the pleadings is a statutory requirement.

Comments

The proposal circulated for public comment from April 9 to June 8, 2018. Comments were received from the Superior Courts of Riverside and San Diego Counties, the Orange County Bar

[2] A motion for judgment on the pleadings must be made no later than 30 days after the action was first set for trial, or a pretrial conference order was entered, whichever occurred later. (Code Civ. Proc., § 438(e).)

Association, and the San Bernardino Department of Child Support Services. Three commenters agreed with the proposal and one agreed but suggested modifications.

Additional information about meet-and-confer session. One of the specific questions posed by the advisory committee in the invitation to comment was the following: "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?"

In response to this question, the Superior Court of Riverside County stated that "[i]t seems unlikely that more detail in a meet and confer declaration would be effective in giving the court a better opportunity to assess whether the parties have engaged in a meaningful meet-and-confer process." By contrast, the Superior Court of San Diego County believes that "it would be great if the form could be revised to require the additional information," in particular, "the specific causes of action that were discussed and the issues of dispute that were raised related to each of the causes of action."

The committee discussed these comments and ultimately decided not to modify the form. Some members thought that requiring additional information could lead to posturing during the meet-and confer sessions and disputes about whether the information was accurate. Though some members thought the additional information would be helpful to judges and provide an overview of the issues in dispute, others thought it would duplicate information contained in the demurrer or motion. Thus, although members noted benefits to requiring additional information on form CIV-140, on balance, the committee concluded that the form should not be revised for this purpose.

Cost savings. The Superior Court of San Diego County stated that although cost savings are unknown, requiring a more detailed discussion of the areas of dispute may assist in resolving them without the need for a demurrer or motion, which would provide cost and time savings for the courts and parties.

Other comments. The San Bernardino Department of Child Support Services indicated "agree if modified" but stated its disagreement with the legislation and forms changes to the extent they apply to public entities. This proposal does not change to whom or what the meet-and-confer requirement applies. In addition, use of the forms to comply with the meet-and-confer requirement is optional; a party filing a demurrer, motion to strike, or motion for judgment on the pleadings may draft its own declarations showing compliance or seeking an extension of time. The committee, therefore, made no changes in response to this comment.

Alternatives considered

The advisory committee considered making no change to the forms but concluded that it was important to revise them to be consistent with the recent statutory changes that expanded the meet-and-confer requirements to apply to motions to strike and motions for judgment on the

pleadings. As discussed above, the committee considered requiring the form declarant to state the specific causes of action that were discussed and the issues of dispute that were raised related to each.

Fiscal and Operational Impacts

The advisory committee believes that any fiscal or operational impacts will be minimal. The forms are 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.

Attachments and Links

1. Forms CIV-140 and CIV-141, at pages 6–7
2. Chart of comments, at pages 8–10
3. Link A: Assembly Bill 644, at *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*):	*FOR COURT USE ONLY* DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
DECLARATION OF DEMURRING OR MOVING PARTY REGARDING MEET AND CONFER	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.

1. (*Name of party making declaration*): 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

2. **DECLARATION** *(Choose either a. or b.)*

a. ☐ 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.

b. ☐ 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.

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)

Form Approved for Optional Use
Judicial Council of California
CIV-140 [Rev. January 1, 2019]

Code of Civil Procedure,
§§ 430.41, 435.5, 439
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
DECLARATION OF DEMURRING OR MOVING PARTY IN SUPPORT OF AUTOMATIC EXTENSION	CASE NUMBER:

1. (*Name of party*): was served with

☐ a complaint ☐ an amended complaint ☐ a cross-complaint

☐ an answer ☐ other *(specify):*

in the above-titled action.

2. 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 why the parties could not meet and confer are stated):*

☐ *below* ☐ *on form MC-031, Attached Declaration*

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

Date:

(NAME OF PARTY OR ATTORNEY FOR PARTY) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

Form Approved for Optional Use
Judicial Council of California
CIV-141 [Rev. January 1, 2019]

Code of Civil Procedure,
§§ 430.41, 435.5, 439
www.courts.ca.gov

SPR18-08

Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer (Revise forms CIV-140 and CIV-141)

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

	Commenter	Position	Comment	Committee Response
1.	San Bernardino Department of Child Support Services (SBDCSS) by Marci Jensen-Eldred Loma Linda, CA	AM	San Bernardino Department of Child Support Services (SBDCSS) disagrees with the proposal regarding legislation and forms changes to CIV-140 and CIV-141 and seeks further clarification as to its applicability to State and Local Child Support Agencies. SBDCSS would agree to the proposal if it was modified to clearly identify that the proposal relates directly to private not public individuals or entities.	This proposal does not change to whom or what the statutory meet-and-confer requirements apply. The form is approved for optional, not mandatory use. A party may draft its own declarations to comply with the meet-and-confer requirements. The committee, therefore, did not make any changes in response to this comment.
2.	Superior Court of Riverside County	A	• Does the proposal appropriately address the stated purpose? It seems unlikely that more detail in a meet and confer declaration would be effective in giving the court a better opportunity to assess whether the parties have engaged in a meaningful meet-and-confer process.	After discussing this issue, the committee decided not to recommend requiring additional information and details in the declaration concerning the meet-and-confer session.
3.	Superior Court of San Diego County	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: 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 committee appreciates the comment and responses to specific questions.

SPR18-08

Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer (Revise forms CIV-140 and CIV-141)

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

	Commenter	Position	Comment	Committee Response
			Our court has not received sufficient information to determine whether a meaningful meet-and-confer session has been held. Yes, it would be great if the form could be revised to require the additional information. Although the amount of time is not essential, it would be helpful to have the parties provide information regarding the specific causes of action that were discussed and the issues of dispute that were raised related to each of the causes of action. Q: Would the proposal provide cost savings? Unknown. Requiring a more detailed discussion may assist in resolving more disputes about the contents of a complaint without the need of a demurrer or other motion challenging it being filed, which would provide time/cost savings for the court and the parties. Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Implementation requirements would be minimal. Applicable procedures were	After discussing this issue, the committee decided not to recommend requiring additional information and details in the declaration concerning the meet-and-confer session. The committee thanks the commenter for responding to specific questions. No response is needed.

SPR18-08

Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer (Revise forms CIV-140 and CIV-141)

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

	Commenter	Position	Comment	Committee Response
			previously revised to reflect the change in law in Jan. 2018. Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? It appears that this proposal would work for all courts.	
4.	Orange County Bar Association by Nikki P. Miliband, President Newport Beach, CA	A	No additional comment.	The committee thanks the commenter for responding.

Item number: 10

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000

Recommended by
Civil and Small Claims Advisory Committee
Hon. Anne I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 10, 2018

Contact
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Executive Summary

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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend rule 3.2300 of the California Rules of Court to conform to changes made by legislation and further clarify the petition process; and
2. Revise form MC-1000 to change the form name, add instructions, and make changes to conform to legislation.

The text of the amended rule and the revised form are attached at pages 7–12.

Relevant Previous Council Action

The Judicial Council adopted rule 3.2300 and approved *Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000), effective 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.

Analysis/Rationale

Background

The State of California currently maintains a CalGang System of databases, which contains information about approximately 150,000 individuals designated by law enforcement as suspected gang members, associates, or affiliates.[1] 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.[2] 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."[3]

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 the health or safety of the minor. (Pen. Code, § 186.34(c)(1).) 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.

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[1] Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2298 (2015–2016 Reg. Sess.), *http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298.*

[2] *Id.* at p. 5.

[3] *Id.* at p. 6.

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 it 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[4] 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.

This proposal amends rule 3.2300 and revises current *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 is 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 be named "*Petition for Review of Denial of Request to Remove Name From Gang Database*"—the same as the form name;
- 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."

Form MC-1000 is revised to:

- Change the form name by replacing the first "Request" with "Petition" and changing 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;

[4] The process of requesting removal from the gang database is also referred to as *contesting the designation*.

- In the instructions section, add "civil" before clerk's office so the petitioner knows where to file the form; and
- Incorporate other minor edits for accuracy and clarity.

Policy implications

Any policy implications are derived from the statutes that require notice and the right to challenge designation as a gang member, the right to a judicial review of a law enforcement agency's denial of a contested designation, and procedures for seeking review. This proposal revises the form for seeking judicial review and amends the rule that provides procedures for seeking review to make them consistent with recent statutory changes.

Comments

The proposal circulated for public comment from April 9 to June 8, 2018. Three commenters submitted comments: the Superior Court of San Bernardino County (which submitted two), the Superior Court of San Diego County, and the Orange County Bar Association.

Commenters agreed that any petition that does not use optional form MC-1000 should bear the same name as that form, "Petition for Review of Denial of Request to Remove Name From Gang Database"; that the rule should not require the petition to be bound; that the proposal appropriately addresses the stated purpose; and that three months from the effective date is sufficient time for implementation.

Commenters disagreed about:

- Whether form MC-1000 should have a notice to the clerk concerning the judge designated to hear petitions for review of denial of the request to remove a name from the gang database; and
- How to reduce the burden of determining that law enforcement failed to file the record in individual cases.

Following discussion, the committee decided to keep the notice to the clerk, which appears at the top of form MC-1000. Based on a comment when the proposal first circulated that it is burdensome for the court—because of limited resources—to determine when law enforcement has failed to file the record, the committee considered amending the rule to require petitioners to do so.[5] The committee concluded, however, that because many petitioners are believed to be self-represented litigants, it is appropriate to place the obligation on the court to determine whether law enforcement has failed to file the record.

[5] The question on the invitation to comment read as follows: "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?"

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 (to the spring 2017 circulation for public comment) 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 the statement, "[i]f 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, was amended for clarity, as discussed on page 3 in the final bullet pertaining to the rule.

Fiscal 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 fiscal and operational impacts result from the legislation and are limited to training, possible case management system updates, and the production of new forms.

Attachments and Links

1. Cal. Rules of Court, rule 3.2300, at pages 7–10
2. Form MC-1000, *Petition for Review of Denial of Request to Remove Name From Gang Database*, at pages 11–12

3. Chart of comments, at pages 13–20
4. Attachment A: Chart of comments on proposal SPR17-26 [this proposal circulated for comment twice, and this chart from the first comment cycle is provided for background]
5. Link A: Assembly Bill 90 (Stats. 2017, ch. 695) *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB90*

Rule 3.2300 of the California Rules of Court is amended, effective January 1, 2019, to read:

Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency denial of request to remove name from shared gang database

(a)–(c) * * *

(d) Petition

(1) *Form*

(A) Except as provided in (i) and (ii), ~~*Request*~~ *Petition for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) must be used to seek review under Penal Code section 186.35 of a law enforcement agency's decision denying a request to remove a person's name from a shared gang database.

(i) A petition filed by an attorney need not be on form MC-1000. For good cause the court may also accept a petition from a nonattorney that is not on form MC-1000.

(ii) Any petition that is not on form MC-1000 must contain the information specified in form MC-1000 and must bear the name "Petition for Review of Denial of Request to Remove Name From Gang Database."

(B) The person seeking review must attach to the petition under (A) either:

(i) The law enforcement agency's written verification, if one was received, of its decision denying the person's request under Penal Code section 186.34 to remove his or her name—or, if the request was filed by a parent or guardian on behalf of a child under 18, the name of the child—from the shared gang database~~.~~; or

(ii) If the law enforcement agency did not provide written verification responding to the person's request under Penal Code section 186.34 within 30 days of submission of the request, a copy of the request and written documentation submitted to the law enforcement agency contesting the designation.

(2)–(5) * * *

(e) Record

(1) *Filing*

(A) The law enforcement agency must serve the record on the person filing the petition and must file the record in the superior court in which the petition was filed.

(B) The record must be served and filed within 15 days after the date the petition is served on the law enforcement agency as required by subdivision (d)(5) of this rule.

(C) 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 or have been sealed, the law enforcement agency must include a coversheet that states "Confidential Filing – Juvenile Case File Enclosed."

(D) The procedures set out in rules 2.550 and 2.551 apply to any record sought to be filed under seal in a proceeding under this rule.

(2) *Contents*

The record is limited to the documents required by Penal Code section 186.35(c).

(3) *Format*

(A) The cover or first page of the record must:

(i) Clearly identify it as the record in the case;

(ii) Clearly indicate if the record includes any documents that are ~~sealed or~~ confidential under Welfare and Institutions Code section 827 or have been sealed;

(iii) State the title and court number of the case; and

(iv) Include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number (if applicable) of the attorney or other person filing the record on behalf of the law enforcement agency. The court will use this as the name, mailing address, telephone

number, fax number, and e-mail address of record for the agency unless the agency informs the court otherwise in writing.

(B) All documents in the record must have a page size of 8.5 by 11 inches;

(C) The text must be reproduced as legibly as printed matter;

(D) The contents must be arranged chronologically;

(E) The pages must be consecutively numbered; and

(F) The record must be ~~bound on the left margin~~ stapled and two-hole punched at the top of the page.

(4) *Failure to file the record*

If the law enforcement agency does not timely file the required record, the superior court clerk must serve the law enforcement agency with a notice indicating that the agency must file the record within five court days of service of the clerk's notice or the court may order the law enforcement agency to remove the name of the person from the shared gang database.

(f) Written argument

(1) *Contents*

(A) The person filing the petition may include in the petition or separately serve and file a written argument about why, based on the record specified in Penal Code section 186.35(c), the law enforcement agency has failed to establish by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person so designated or to be so designated by the law enforcement agency in the shared gang database.

(B) The law enforcement agency may serve and file a written argument about why, based on the record specified in Penal Code section 186.35(c), it has established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person.

(C) If an argument refers to something in the record, it must provide the page number of the record where that thing appears or, if the record has not yet been filed, the page number of the relevant document.

(D) Except for any required attachment to a petition, when an argument is included in the petition, nothing may be attached to an argument and an argument must not refer to any evidence that is not in the record.

(2) *Time to serve and file*

Any written argument must be served and filed within 15 days after the date the record is served.

(3) *Format and length of argument*

(A) The cover or first page of any argument must:

(i) Clearly identify it as the argument of the person filing the petition or of the law enforcement agency;

(ii) State the title and, if assigned, court number of the case; and

(iii) Include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number (if applicable) of the attorney or other person filing the argument.

(B) An argument must not exceed 10 pages.

(C) The pages must be consecutively numbered.

(g)–(i) * * *

MC-1000

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 page 2 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 petition must be submitted to one of those judges.

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 do not have to submit written argument, but if you wish to, 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.*

Case Number:

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 and 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, complete the date and way in which you submitted the request.

   In Item 4: Check to indicate if 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*.

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 file 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.

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Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of San Bernardino County by Executive Office San Bernardino, CA	AM	Does the proposal appropriately address the stated purpose? o Yes 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? o The binding would not be necessary. Two-hole punch would be preferable. Revise Rule 3.2300(e)(3)(F) as follows: (F) The record must be~~ bound on the left margin.~~ Stapled and two-hole punched at the top of the page. 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? o In large courts, such as ours, a requirement that the clerk notify law enforcement upon their failure to timely file the record is burdensome/cumbersome due to limited resources.	The committee appreciates the comments in response to specific questions. The committee has made this change. The committee discussed this matter and decided that retaining the requirement was appropriate as the alternative would be to require petitioners to notify the court that they had not received the record and for the court to notify law enforcement. Because many petitioners are

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Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000)

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	Commenter	Position	Comment	Committee Response
			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? o The petition should read the same as the title of the judicial council form—Petition for Review of Denial of Request to Remove Name from Gang Database. Revise Rule 3.2300(d))1)(A)(ii) as follows: (ii) Any petition that is not on form MC-1000 ~~must~~ shall contain the information specified in form MC-1000 and shall ~~must~~ include in its name the caption the words "~~Gang Database Review.~~ Petition for Review of Denial of Request to Remove Name from Gang Database." 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? o Yes, this is helpful. 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? o Yes	believed to be self-represented litigants, the committee decided not to impose the requirement on petitioners. The committee has made this change to the rule text (but retained use of the word "must" rather than "shall.") The committee retained the information under "Notice to Clerk." The committee thanks the commenter for the comments below, which require no change to the proposal as circulated.

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	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. o This would require training of Legal Processing Assistants, Judicial Assistants, and Operation Supervisor I's not to exceed 8 hours along with revising procedures manuals. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? o Yes	
2.	Superior Court of San Diego by Mike Roddy Executive Officer San Diego, CA	AM	**Q: Does the proposal appropriately address the stated purpose?** Yes. **Q: 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?** Request that requirement that record be bound on the left margin be removed, as many courts have	The committee appreciates the comments in response to specific questions. The committee has made this change.

	Commenter	Position	Comment	Committee Response
			transitioned to electronic case files and scan documents. **Q: 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?** Yes, revise the rule to require the petitioning party to notify the court when the law enforcement agency has failed to file the record. This would be similar to the default process in civil actions. Upon notification by the party that the law enforcement agency has failed to file the record, the clerk would then send notice to the agency. **Q: 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?** The same name should be used for consistency and to ensure that the filing is processed correctly.	The committee discussed this and decided that because many petitioners are believed to be self-represented litigants, it would be best to require the court to determine that law enforcement had not filed the record, rather than imposing this on petitioners. The committee has made this change.

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Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000)

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

	Commenter	Position	Comment	Committee Response
			Q: 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? This language can be removed. If a court does not already have established procedures for the process, the clerk can refer to the applicable statutes and rule referenced in the footer of the form for direction. **Q: 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?** Yes, otherwise there is no indication on the form of the appropriate business office to file the form in. While the form does reference rule 3.2300(d)(3), the rule simply instructs the party to submit the form in the county in which the law enforcement agency is located or in which they reside. A reasonable person could assume that since the form references the Penal Code and "review" throughout, that it should be filed in the criminal or appellate division. In larger counties this could result in parties having to drive to another location. **Q: Would the proposal provide cost savings?** No.	The Superior Court of San Bernardino County (comment #1) and the Orange County Bar Association (comment #4) commented that having the requirements on the form is helpful. The committee discussed this question and decided to keep the requirements on the form under "Notice to the Clerk." The committee thanks the commenter for the comments below; no further response is necessary.

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	Commenter	Position	Comment	Committee Response
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minor updates to existing procedures and renaming filing in case management system. **Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **Q: How well would this proposal work in courts of different sizes?** This proposal would work for all courts, but may have a larger impact on larger courts.	
3.	Superior Court of San Bernardino County by Executive Office	NI	Comment: If the matter was originally sealed in the juvenile court, are the records submitted by the petitioner also "sealed" or "confidential". ? The civil computer system can be accessed by any party and if the documents that were "sealed" are available to the general public, then the petitioners sealed record becomes available to everyone, defeating the purpose of sealing	This proposal does not change the status of records as being sealed or confidential. The rule requires that the coversheet indicate if the record contains any documents that are confidential under Welfare and Institutions Code section 827 or that have been sealed. (Rule 3.2300 (e).)

SPR18-09

Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000)

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

	Commenter	Position	Comment	Committee Response
			juvenile records. (Regardless of the outcome of the petition, granted or denied)	
4.	Orange County Bar Association by Nikki P. Miliband President Newport Beach, CA	A	**Does the proposal appropriately address the stated purpose?** The proposals adequately meets the recent changes in the statutory procedure. **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?** If binding means more than a mere staple, then binding is not helpful to those courts who use electronic filling and storage. **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?** No suggestion.	The committee appreciates the comments. This change has been made to the rule.

SPR18-09

Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000)

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

	Commenter	Position	Comment	Committee Response
			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? The attorney should use the same name as the form so as not to confuse the clerk's office. **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?** The notice is helpful to both attorneys and the clerk's office. It should remain. **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 instructions are helpful.	This change has been made to the rule. The committee decided to retain this notice. The committee thanks the commenter for this, which requires no change to the proposal as circulated.

Item number:11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23-24, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise Confidential Information Form under Civil Code § 1708.85 (form 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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Rules and Forms: *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125)

Rules, Forms, Standards, or Statutes Affected
Revise form MC-125

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Judicial Council Staff
Sarah Abbott, Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 3, 2018

Contact
Sarah Abbott, 415-865-7687
sarah.abbott@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee proposes revisions to the *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125). This form is used by parties in cases filed under Civil Code section 1708.85, which provides a private cause of action for wrongful distribution of sexually explicit material, to file any material or information that the statute mandates be kept confidential and not included in the public files. The proposed revisions are intended to reflect amendments to Civil Code section 1708.5 that took effect January 1, 2018.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise form MC-125 to:

1. Expand the list of document types with which the form is being filed, by adding "other pleading" and "discovery document" to the checklist in Instructions item 2.

2. Make more explicit that the form may be used by any party when necessary, by adding a sentence to this effect in Instructions item 2.
3. Reflect the mandatory nature of filing the form, by highlighting the word "must" where it currently appears in Instructions items 1, 3, and 4, and replacing the phrase "may be" with "plaintiff may, and all other parties **must**" in Instructions item 4.
4. Include the full amended definition of the term "identifying characteristics," along with a reference to the new definition of "online identifiers," in Instructions item 4.
5. Modify the form heading to require additional identifying information about the party filing the form.

The text of the revised form is attached at pages 7–8.

Relevant Previous Council Action

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 other "identifying characteristics" of the plaintiff from all pleadings and documents filed in the action. The Judicial Council initially adopted form MC-125 as of July 1, 2015, 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 when confidential identifying characteristics were excluded or redacted from the pleadings.

Analysis/Rationale

As of January 1, 2018, Civil Code section 1708.85 was amended to expand the privacy protections for the plaintiff. The amended statute provides that "[t]he Judicial Council shall, on or before January 1, 2019, adopt or revise as appropriate rules and forms in order to implement subdivision (f)."[1]

Amended Civil Code section 1708.85 expands the privacy protections for the plaintiff by requiring 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."[2] The 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.[3] The amended statute further requires that "[a] party excluding or redacting identifying

[1] Civ. Code, § 1708.85(j).

[2] Civ. Code, § 1708.85(f)(2)(A).

[3] Civ. Code, § 1708.85(f)(2)(B)(i).

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."[4] The amendments have also added "discovery documents" to the list of documents that are to be worded to protect the name and identifying information of the plaintiff.[5] Finally, the amended statute includes a more expansive definition of the term "identifying characteristics" than the prior version and creates a new definition for the term "online identifiers" contained therein.[6]

To reflect the fact that form MC-125 must be used with a broad variety of documents—specifically including pleadings and discovery documents—when the plaintiff elects to proceed using a pseudonym, the committee proposes revising item 2 to add "other pleading" and "discovery document" to the list of document types with which the form is being filed.

Further, because the amended statute makes exclusion or redaction of a plaintiff's identifying characteristics and the filing of form MC-125 mandatory for all parties when a plaintiff proceeds under a pseudonym, the committee proposes that Instructions items 1, 3, and 4 be revised to reflect the mandatory nature of the filing. The committee proposes highlighting the word "must" where it currently appears in the instructions, and replacing the phrase "may be" with "plaintiff may, and all other parties **must**" in Instructions item 4.

Likewise, to make clear that the form is to be used by all parties when a plaintiff elects to proceed using a pseudonym, the committee proposes adding a party identifier to the form heading and adding a sentence to Instructions item 2 to specifically state that any party must use form MC-125 when necessary.

The amended statute also includes a more expansive definition of the term "identifying characteristics" than the prior version and creates a new definition for the term "online identifiers" contained therein. In its current form, Instructions item 4 states that the "identifying characteristics" to be redacted "include, but are not limited to" the list of characteristics contained in the original version of Civil Code section 1708.85. To avoid confusion and comport with the current statutory definition of "identifying characteristics," the committee proposes revising Instructions item 4 to include the full amended definition of "identifying characteristics," along with a reference to the new definition of "online identifiers."

[4] Civ. Code, § 1708.85(f)(2)(B)(ii).

[5] Civ. Code, § 1708.85(f)(2)(C).

[6] Civ. Code, § 1708.85(f)(3).

Policy implications

As the proposed revisions are intended only to provide clarity to parties and counsel and conform the form to amended statutory language, no policy implications relating to this proposal were raised during the comment period or during committee discussions.

Comments

Proposed revisions to form MC-125 were circulated for public comment from April 9 through June 8, 2018, as part of the regular spring comment cycle. No individuals submitted comments on this proposal. One organization, the Orange County Bar Association, submitted a comment agreeing with this proposal. Two courts—the Superior Courts of San Bernardino and San Diego Counties—submitted comments agreeing with the proposal if modified, and suggested additional revisions to form MC-125. A chart with the full text of the comments received and the committee's responses is attached at pages 9–12. Based on the comments received, and for the reasons discussed below, the committee recommends that the Judicial Council adopt the proposal with three additional revisions.

As circulated for public comment, the proposal would have (1) revised Instructions items 1, 3, and 4 of form MC-125 to reflect that redaction or exclusion of identifying characteristics is mandatory by all parties if the plaintiff is proceeding under a pseudonym, and (2) revised Instructions item 4 to incorporate the amended definition of "identifying characteristics" including reference to the newly enacted definition of "online identifiers." No commenter expressed opposition to these proposed revisions, and the committee recommends that they be adopted as circulated for public comment.

The Invitation to Comment also specifically asked whether an item should be added to require parties filing the form 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 with the court. While no commenter recommended adding an additional item to the form, both commenting courts suggested additional revisions to the form relating to different aspects of this question.

First, to assist the clerk in identifying the filing party, the Superior Court of San Diego County suggested adding a "party identifier" below the party/attorney's signature line, and changing the phrase "ATTORNEY FOR (*name or pseudonym*)" in the form heading to "ATTORNEY FOR (*party*)." The committee discussed whether one, both, or neither of the San Diego court's proposed additional revisions would be advisable, and determined that one or the other would likely be helpful in determining what party is filing form MC-125, but both are unnecessary. The committee believes that the best approach would be to implement only the commenter's second suggestion as modified to include the phrase "ATTORNEY FOR (*party name or pseudonym*)" in the heading. The committee recommends that this additional revision be made to form MC-125.

The Superior Court of San Bernardino County suggested that form MC-125 be revised to clearly indicate that the form is not limited to complaints by modifying the checklist in item 2 to specifically include "other pleading" and "discovery document" among the list of document types with which the form should be used. Prior to circulation of the proposal, the committee had

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 but included a question on the issue in the Invitation to Comment to solicit further comment on the issue. Based on this comment, the committee now believes that it would be helpful for the form to include more information as to which document it accompanies, including a specific reference to discovery documents. The committee therefore recommends that this additional revision be made to form MC-125.

There was also a suggestion to further revise Instructions item 6 to specifically state that the form should be used when discovery documents redacted under Civil Code section 1708.85 are filed. The committee discussed this suggestion but decided that it is unnecessary, especially if item 2 is further revised to specifically include "discovery document" among the list of documents with which the form may or must be filed, as is recommended above.

Finally, the Superior Court of San Bernardino County also suggested adding a sentence to the end of Instructions item 2 to specify that: "Any other party may use this form when necessary." The committee believes that a revision would make it clearer that the form must also be used by parties other than plaintiffs when necessary and should be made to form MC-125.

Alternatives considered

Alternate revisions to the form were 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 initially 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. The committee concluded that such a revision was not necessary to implement the statute, but asked for specific comments as to whether such a revision would be helpful to the courts and/or litigants. As discussed above, based on the comments received in response to this question, the committee now recommends additional revisions to the form heading, item 2, and Instructions item 2.

In addition to the alternatives on which the committee received public comment, the committee also considered whether it would be preferable not to propose any revisions to form MC-125 at this time. The committee concluded, however, that while no changes to the existing form were *required* to implement the amendments to Civil Code section 1708.85, the proposed changes would more closely align the form with the amended statutory language and make the form clearer for litigants and court staff. The committee therefore determined that it would be beneficial to propose these revisions.

Fiscal and Operational Impacts

Because Civil Code section 1708.85 and form MC-125 have been operative for several years, the training required for court clerks and judicial officers regarding the revised form will not be overly burdensome. 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,"[7] 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. The Superior Court of San Diego County noted that increased processing time might result because of more parties having to file the form, but that requirement arises from the statute and not from revisions to the form.

Attachments and Links

1. Form MC-125, at pages 7–8
2. Chart of comments, at pages 9–12

[7] Civ. Code, § 1708.85(f)(4).

CONFIDENTIAL

MC-125

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 (*party name or pseudonym*):	*FOR COURT USE ONLY* DRAFT 07/26/18
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
CONFIDENTIAL INFORMATION FORM UNDER CIVIL CODE SECTION 1708.85	CASE NUMBER:

TO COURT CLERK: THIS FORM IS CONFIDENTIAL

INSTRUCTIONS FOR FILER ARE ON BACK

1. This action includes a claim under Civil Code section 1708.85.

2. The document with which this form is being filed is a

   a. ☐ complaint or other pleading.
   b. ☐ discovery document.
   c. ☐ other *(describe)*:

3. **Name of Plaintiff** *(complete if being filed with complaint)*

   a. ☐ Plaintiff did not use a pseudonym in the complaint.

   b. ☐ 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 *(page and line where the redaction occurs)*	INFORMATION REDACTED *(text that has been redacted)*
1.		
2.		
3.		

☐ Continued on next page.

Form Adopted for Mandatory Use
Judicial Council of California
MC-125 [Rev. January 1, 2019]

Civil Code, § 1708.85
www.courts.ca.gov

SHORT TITLE:	CASE NUMBER:

	LOCATION OF REDACTION (*page and line where the redaction occurs*)	INFORMATION REDACTED (*text that has been redacted*)
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.)*

1. 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).
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 other party must also use this form when necessary.
3. 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.
4. "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, race or ethnic background, telephone number, e-mail 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.")
5. 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.
6. 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.

SPR18-10

Forms: Confidential Information Form Under Civil Code Section 1708.85 (Revise form MC-125)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Nikki P. Miliband, President	A	No specific comment.	The committee notes the commenter's support for the proposal.
2.	Superior Court of San Bernardino County	AM	Q: Do the proposed revisions to form MC-125 appropriately implement the amendments to Civil Code section 1708.85? o Yes	The committee notes the commenter's support for the proposal.
			Q: 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? o No	The committee appreciates this input; no further response required.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. o This would require training of Legal Processing Assistants, Judicial Assistants, and Operation Supervisor I's not to exceed 4 hours overall, revising procedures manuals and developing case categories for limited, mid, and unlimited matters.	The committee appreciates the comment responding to this question, but notes that part of the comment appears to be directed to a different proposal relating to civil tiers.
			Q: Would 3 months from judicial council approval of this proposal until its effective date provide sufficient time for implementation? o Yes	The committee appreciates this input; no further response required.

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

SPR18-10

Forms: Confidential Information Form Under Civil Code Section 1708.85 (Revise form MC-125)

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

	Commenter	Position	Comment	Committee Response
			Suggestions for Form M-125: Paragraph 2 on page one: We suggest that paragraph 2 read as follows to clearly indicate that the form is not limited to complaints and includes discovery as well as other pleading/documents: "2. "The document with which this form is being filed is a a. complaint or other pleading. b. discovery document. c. other (describe):" Page 2, Instructions: Revise as follows: 2. Add the following sentence to paragraph 2 as follows: "Any other party may use this form when necessary." 6. Revise paragraph 6 as follows: "A copy of this form should be completed each time a pleading, or document, or discovery document, redacted under Civil Code section 1708.85, is filed and should be served and filed along with the redacted document."	The committee appreciates this input; no further response required. The committee believes that it would be advisable to implement this suggestion, and the form has been modified as suggested. The form has been modified in light of this comment. The committee considered this suggestion to add "discovery document" to instruction item 6. However, the committee does not believe this revision is needed given that the instruction as currently stated is broad enough to encompass discovery documents among the documents with which the form is to be filed and item 2 is being revised to specifically include discovery documents.
3.	Superior Court of San Diego County by Mike Roddy, CEO	AM	Q: Do the proposed revisions to form MC-125 appropriately implement the amendments to Civil Code section 1708.85? Yes. Q: Should an item be added to form MC-125 that requires a party filing the document to	The committee notes the commenter's support for the proposal.

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

SPR18-10

Forms: Confidential Information Form Under Civil Code Section 1708.85 (Revise form MC-125)

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

	Commenter	Position	Comment	Committee Response
			include more detail about the identity of the filing party and more specific information about the document with which the form is being filed?	
			Yes. The Committee may wish to include a party identifier (e.g., plaintiff, defendant, etc.) following the party/attorney's signature on page 2. This is similar to the approach used on Judicial Council form CIV-110 Request for Dismissal, which also may be filed by various parties to an action.	The committee has considered this suggestion, as well as the suggestion below to revise the heading to place the phrase "name or pseudonym" with the term "party." The committee believes that some variation of these revisions to clarify the filer's identity may be advisable, but both are unnecessary. The committee has modified the proposal to include the phrase "ATTORNEY FOR (party name or pseudonym)" in the header.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.	
			Local procedures were updated in January to reflect new law and since the name of the form remains unchanged, no changes to the case management system are necessary. The change will result in increased processing time, as all parties will be required to redact the information and file the MC-125 form.	The committee appreciates the comment responding to this question.
			Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	

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

SPR18-10

Forms: Confidential Information Form Under Civil Code Section 1708.85 (Revise form MC-125)

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

	Commenter	Position	Comment	Committee Response
			Yes. Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of various sizes. **General Comments: MC-125**: Our Court proposes the following changes: • "ATTORNEY FOR (*name or pseudonym)*" listed in the header be changed to "ATTORNEY FOR *(party)*". • Include the party role under the signature on page 2. See Request for Dismissal (JC Form #CIV-110). These changes will assist the clerk in identifying the filing party. See response to question 2.	The committee appreciates this input; no further response required. The committee appreciates this input; no further response required. The committee has considered this suggestion, as well as the suggestion above to include a party identifier (e.g., plaintiff, defendant, etc.) following the party/attorney's signature on page 2. The committee believes that some variation of these revisions to clarify the filer's identity may be advisable, but both are unnecessary. The committee has modified the proposal to include the phrase "ATTORNEY FOR (party name or pseudonym)" in the header.

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

Item number:13

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Petition for Writ of Habeas Corpus - SPR18-13

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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Criminal Procedure: Petition for Writ of Habeas Corpus

Rules, Forms, Standards, or Statutes Affected
Revise form HC-001

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 8, 2018

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

Executive Summary

The Criminal Law Advisory Committee recommends revising the Judicial Council form used by noncapital petitioners to petition for a writ of habeas corpus to update the form's instructions on 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 to include the court in which the petition is filed; and add citations as authority for the procedural bars of successiveness and repetitiveness.

Recommendation

The Criminal Law Advisory committee recommends that the council, effective January 1, 2019, revise form HC-001 to:

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, standalone item 6(b) and reletter 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 reletter the current item 7(b) as item 7(c);

4. Replace or add citations to authorities on the form with citations to authorities that are more recent or more on point for the propositions they support; and

5. Clarify that the procedural bars against successive and repetitive petitions include petitions that are filed in the same court.

Relevant Previous Council Action

The Judicial Council most recently updated the *Petition for Writ of Habeas Corpus*, (form HC-001) effective January 1, 2017 to add language reflecting different requirements as to the number of copies to be filed if a petition is filed electronically. This form was previously Judicial Council form MC-275. On May 24, 2018, the Judicial Council approved a technical revision to change the number and category of this form to HC-001.

Analysis/Rationale

Petition for Writ of Habeas Corpus (form HC-001) is used by noncapital 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. Under 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. These recommended revisions would update form HC-001 in several respects, and provide improved guidance to petitioners and courts.

Recently, the Courts of Appeal have moved to mandatory electronic filing of most papers, including petitions for writs of habeas corpus. The revisions recommended by the committee include updating the instructions on the first page of HC-001 to reflect this change in procedure.

Petitions from unrepresented petitioners 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). The revisions recommended by the committee include clarifying that these procedural bars apply to petitions that are filed in the same court and adding citations to authorities relating to these bars (*In re Clark* (1993) 5 Cal.4th 750, 767–769; *In re Miller* (1941) 17 Cal.2d 734, 735).

HC-001 currently includes citations to authority relevant to some of the statements and questions on the form. There are newer authorities, or in some cases other authorities, relevant to these

statements and questions. The revisions recommended by the committee include updating these citations. Specifically, the revisions would:

- Add 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;
- Add 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;
- Replace 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 requirements relating to administrative review;
- Add 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"; and
- Replace 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.

Policy implications

There are no policy implications to the revisions that the committee is recommending to this form.

Comments

A total of two comments were received: one from the Superior Court of San Diego County and one from the Orange County Bar Association. Both commenters agreed with the proposal in its entirety, offering neither alternatives nor additional suggestions.

Alternatives considered

The committee considered not revising form HC-001, given fiscal constraints on courts, but determined that 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.

Fiscal 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.

Attachments and Links

1. Form HC-001, at pages 4–9
2. Chart of comments, at page 10

Name: _____

Address: _____

_____

_____

_____

_____

CDC or ID Number: _____

_____

_____

_____

_____

(Court)

_____

Petitioner

vs.

_____

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, 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, 2018). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

☐ A conviction ☐ Parole

☐ A sentence ☐ Credits

☐ Jail or prison conditions ☐ Prison discipline

☐ Other *(specify):* _____

1. Your name: _____

2. Where are you incarcerated? _____

3. Why are you in custody? ☐ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

_____

_____

_____

_____

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court:

_____

_____

_____

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? ☐ Yes ☐ No *If yes, state the attorney's name and address:*

_____

_____

_____

4. What was the LAST plea you entered? *(Check one):*

☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

a. Supporting facts:
Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where).*

b. Supporting documents:
Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal. 4th 464, 474.)

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.)

7. **Ground 2 or Ground** _____ *(if applicable):*

a. Supporting facts:

b. Supporting documents:

c. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
   a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
   b. Result: c. Date of decision:
   d. Case number or citation of opinion, if known:
   e. Issues raised: (1)
      (2)
      (3)
   f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:
9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
   a. Result: b. Date of decision:
   c. Case number or citation of opinion, if known:
   d. Issues raised: (1)
      (2)
      (3)
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (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)

SPR18-13

Criminal Procedure: Petition for Writ of Habeas Corpus

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By Nikki P. Miliband President	A	No specific comment.	No response necessary.
2.	Superior Court of California San Diego By Michael M. Roddy Executive Officer	A	No specific comment.	No response necessary.

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

Item number: 14

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Criminal Justice Realignment: Petition and Order for Dismissal

Rules, Forms, Standards, or Statutes Affected
Forms CR-180 and CR-181

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 6, 2018

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

Executive Summary

The Criminal Law Advisory Committee recommends 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.

Recommendation

The Criminal Law Advisory committee recommends that the Judicial Council, effective January 1, 2019, revise the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to incorporate the new statutory basis for relief under Penal Code section 1203.42, as follows:

1. Add a reference to section 1203.42 to the caption of both forms;

2. Add new item 6 to form CR-180 for petitioners to indicate the new option for requesting relief under section 1203.42;

3. 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 an *Attached Declaration* (form MC-031) or submit other relevant documents, and revise the instructions in items 3, 4 and 5 to indicate the same, for relief under sections 1203.4a, 1203.49 and 1203.41, respectively;

4. Remove the check boxes on renumbered item 9 on form CR-180, and reference the forms of relief that the petitioner has indicated "under the Penal Code section(s) noted above";

5. 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 current items 6, 8, and 9; and

6. Add space for notations following items 1–5 on form CR-181, and reverse the order of items 6 and 7.

The text of the revised forms is attached at pages 4–8.

Relevant Previous Council Action

The Judicial Council most recently updated the *Petition for Dismissal* and the *Order for Dismissal*, effective January 1, 2017, adding an option for petitioners to request relief under section 1203.43 for those who had successfully completed a deferred entry of judgment program.

Analysis/Rationale

Forms CR-180 and CR-181 are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.43, and 1203.49.[1] These are two of the most heavily used optional criminal law forms and form CR-180 is 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[2] 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.

In September 2017, the Legislature enacted Assembly Bill 1115,[3] 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

[1] All further statutory references are to the Penal Code.

[2] Assem. Bill 651 (Bradford; Stats. 2013, ch. 787).

[3] Assem. Bill 1115 (Jones-Sawyer; Stats. 2017, ch. 207).

realignment legislation, would have been eligible for a county jail sentence under section 1170(h)(5). The recommended revisions to forms CR-180 and CR-181 incorporate the relief provided under section 1203.42.

Comments

This proposal circulated for comment from April 9 to June 8, 2018. A total of three comments were received. The Superior Court of San Diego County agreed with the proposal, as did the Orange County Bar Association. Neighborhood Legal Services of Los Angeles County (NLS) did not identify a position but offered several comments for the committee's consideration.

NLS expressed concern both about the length of the form and about the lack of sufficient space for narratives provided on items 4, 5, and 6 of form CR-180 to allow petitioners to meaningfully explain the bases for which they seek relief. NLS suggested removing the spaces for petitioners' narratives. The committee declined this suggestion because form CR-180 is designed to strike a balance between the length of the form and the functionality to provide options for submitting narrative information directly on the form or through the use of attachments. The committee also revised the form CR-181 to provide the court with sufficient space for notations following items 1–5 and to reverse the order of items 6 and 7.

NLS expressed concern that the check boxes in item 9 on form CR-180 are redundant and confusing. The committee accepted the suggestion to revise item 9 by removing the check boxes for specific statutory sections.

NLS suggested that the committee provide guidance for pro per litigants regarding appropriate narrative information to include in support of their request for relief, and provided a sample questionnaire for developing such guidance. The committee declined the suggestion at this time, because such a substantive change to the proposal would require that it be recirculated for public comment. However, the committee may consider adding an information sheet for form CR-180 in the future.

Alternatives considered

The committee considered creating new forms to address the new form of relief provided under section 1203.42. The committee concluded, however, that this would be 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 also rejected this approach as unnecessary and potentially confusing.

Fiscal 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.

Attachments and Links

1. Forms CR-180 and CR-181, at pages 5–9
2. Chart of comments, at pages 10–14
3. Link A: Assembly Bill 1115, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1115

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)**	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

1. On *(date):* , the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	**Section**	**Type of offense** *(felony, misdemeanor, or infraction):*	**Eligible for reduction to misdemeanor under Penal Code, § 17(b)** ***(yes or no)***	**Eligible for reduction to infraction under Penal Code, § 17(d)(2)** ***(yes or no)***

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

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

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; 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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)*

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

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; ***or***

b. ☐ should be granted relief in the interests of justice. *(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)*

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

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and 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 evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)*

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.41)***

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and *(check one)*

a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); ***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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

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

6. ☐ **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.42)***

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

7. ☐ **Deferred entry of judgment *(Pen. Code, § 1203.43)***

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on *(date):* . Furthermore *(check one),*

a. ☐ court records are available showing the case resolution; ***or***

b. ☐ petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (*check one*)

(1) ☐ has
(2) ☐ has not

attached a copy of his or her state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

9. Petitioner requests that he or she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under the Penal Code section(s) noted above.

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

Date:

▶ _____
(SIGNATURE OF PETITIONER OR ATTORNEY)

_____ _____ _____ _____
(ADDRESS OF PETITIONER) (CITY) (STATE) (ZIP CODE)

CR-181

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)**	CASE NUMBER:

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

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces
   a. ☐ ALL FELONY CONVICTIONS in the above-entitled action.
   b. ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
   c. ☐ only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

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

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code *(check all that apply)*
   ☐ § 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)*
   a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
   b. ☐ 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)*:

CR-181

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

4. 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)*

a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.

b. ☐ 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):*

5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders *(check one)*

a. ☐ the relief described in section 1203.4.

b. ☐ the relief described in section 1203.4, with the following exceptions *(specify)*:

6. If 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.

7. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41, or 1203.42,

a. the petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission; and

b. dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

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).

FOR COURT USE ONLY

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.

Date:

(JUDICIAL OFFICER)

SPR18-14
Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Neighborhood Legal Services By: Kevin Reyes Staff Attorney	N/I	Dear Honorable Judicial Council: Neighborhood Legal Services of Los Angeles County (NLSLA) is a civil legal aid organization serving low income communities in Los Angeles County and is one of the largest and most prominent public interest law firms in California. Our work is dedicated to addressing the most critical needs of communities living in poverty. To that end, we have developed a comprehensive and robust program to support people with criminal records that hope to rejoin their communities and remove critical barriers related to employment, housing, and other supportive resources. The NLSLA Clean Slate Initiative coordinates two monthly clinics that assist many San Fernando, San Gabriel and Antelope Valley residents with clearing their criminal records and ultimately reversing the collateral consequences of their convictions. In addition to our clinics, we also provide direct legal services for clients that face more complex issues as a result of prior criminal justice involvement and expend significant time educating the community through workshops and "Know Your Rights" presentations on various remedies available to this population. Through our work, we assist clients that seek Penal Code 1203.4 dismissals in the hopes of improving their lives. As a result, we are very familiar with the Judicial Council CR- 180 and CR-181 forms. NLSLA applauds the judicial councils' suggestion to include a section for relief codified under Penal Code Section 1203.42. This will allow pro per	No response required.

	Commentator	Position	Comment	Committee Response
			litigants to effectively request the remedies available under this provision without having to prepare additional forms. However, we are concerned that some of the sections on the form may lead to unnecessary confusion and limit a pro per petitioner's accessibility to obtain the relief sought. Below are our specific comments on the proposed revisions to forms CR-180 and CR-181 under SPR18-14 and submit the following comments: **The additional spaces provided on Items 4, 5 & 6 of the CR-180 form are unnecessary and may increase administrative costs for low-income, pro per litigants**. The Judicial Council proposes to allow petitioners to add narratives in Item(s) 4, 5 & 6 of the CR-180 petition to provide them an opportunity to explain the reasons why they believe relief should be granted. Generally, many of those seeking relief under this provision are low-income and do not have the assistance of an attorney. The inclusion of these small spaces do not allow petitioners to meaningfully explain the bases for which they seek relief. It also requires that a petitioner print out an additional page which will increase printing costs for our clients, many of whom have income that fall well below 125% of the Federal Poverty Level. For example, if a person wants to file a petition for two cases. They must make 3 copies for each case which would result in a total of 24 pages at a cost of .50 cents to $1.00 per page. This is regardless of whether they are actually	The committee declines the suggestion to remove the spaces for petitioners' narratives as form CR-180 is designed to strike a balance between the length of the form and providing options for submitting narrative information directly on the form or through the use of attachments.

	Commentator	Position	Comment	Committee Response
			required to provide a narrative in the case. While we affirm that a declaration remain optional for those that choose to use it, the Council should limit the CR-180 to two pages so as not to be overly cumbersome. We would recommend that when a declaration is mandatory, a check box is added with language at the end of that section which reads, "*You MUST fill out the attached MC-031 declaration*" so that petitioners are aware that they have to include a statement. This will make it clear to a petitioner that they should include a statement with their petition and not potentially run out of space. We would also strongly encourage the Council to include some version of the attached questionnaire with the MC-031 form declaration to help guide pro per litigants on what information they could include in their statement when they do not have the benefit of an attorney. (See Proposed Exhibit 1) **Item 9 on Form CR-180 is redundant and may limit a petitioner's access for relief.** The Judicial Council also proposes to include a check box in Item 9 on the CR-180 form that requires the petitioner to restate what Penal Code section they are requesting for dismissal of their conviction. This is confusing for pro per petitioners and may create a barrier for them in getting the relief sought. Unlike others sections of the form, Item 9 does not provide an explanation as to the various Penal Code sections that may apply and what each section	The committee declines the suggestion as there is not a mandatory format for petitioners to provide information in support of their requests for relief. The committee declines the suggestion to provide petitioners with guidance regarding the type of narrative information to include at this time, as that would be substantive change to the proposal that would require recirculation. The committee may consider adding an information sheet for form CR-180 in the future. The committee accepts the suggestion to revise item 9 by removing the check boxes for particular statutory sections, and to reference the forms of relief that the petitioner has indicated "under the Penal Code section(s) noted above" on form CR-180.

	Commentator	Position	Comment	Committee Response
			requires. As such, a petitioner is prompted to check the box for the corresponding Penal Code section a second time, when they have already indicated it in the preceding paragraphs. Many of the petitioners may not realize they are required to restate the Penal Code Section they are requesting relief under. In fact, in some of our clinics, trained pro bono volunteers often forget or do not realize they must check off one of the boxes in Item 9. Luckily, our volunteers are closely supervised and we are able to catch this error before the petition is filed. However, the risk of error is increased for a pro per litigant not trained in the legal field. We recommend that Item 9 be entirely removed due its redundancy and confusing nature or in the alternative remove all of the check boxes so that it simply reads: **"***Petitioner requests that he or she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under the Penal Code section previously indicated."* We believe the measures mentioned in our comments are necessary to ensure that a post-conviction dismissal is equally accessible to all those who need it, regardless of their education level or economic status. Thank you for your time and consideration.	
2.	Orange County Bar Association By: Nikki P. Miliband President	A		No response required.

SPR18-14
Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

Item number: 15

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings

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

Staff contact (name, phone and e-mail): Amy Kimpel, 415-865-7995, amy.kimpel@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:
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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.130

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 2, 2018

Contact
Amy Kimpel, 415-865-7995
amy.kimpel@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective January 1, 2019, to make court-appointed experts' reports on a criminal defendant's competency to stand trial presumptively confidential. The proposal also includes procedures for interested parties to request access to the experts' reports through requests to unseal. The proposal was suggested by a judge of the Superior Court of Los Angeles County due to the sensitive nature of information he saw included in evaluator reports.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective January 1, 2019.

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.

The text of the amended rule is attached at pages 5–7.

Relevant Previous Council Action

California Rules of Court, rule 4.130, mental competency proceedings, was developed by the Criminal Law Advisory Committee and adopted by the Judicial Council, effective January 1, 2007. The advisory committee comment included the statement that "the expert reports, unless sealed under rule 2.550, are publicly accessible court documents." The Judicial Council report about the proposal was silent on the committee's decision to include this comment. The committee's response to a comment from the public expressing concern about the reports being publicly accessible was that there was no provision in law making the reports confidential, and therefore, the only ones not publicly accessible were those sealed under former rule 243.1, the rule governing sealed records.

Amendments to rule 4.130 developed by the Criminal Law Advisory Committee and adopted by the Judicial Council, effective January 1, 2018, delineated what should be included in an evaluator's report. The amended rule dictates that a report should include, among other things, a diagnosis from the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* and a summary of the defendant's mental status.

Analysis/Rationale

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 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.

Policy implications

As discussed above, the committee considered the benefits to making reports presumptively confidential and the downsides to restricting the public's access to these reports. The committee felt that the proposed amendment to the rule properly balanced these policy concerns.

Comments

This proposal circulated for public comment during the spring 2018 cycle. A total of two comments were received. One commenter agreed with the proposal, while the other commenter made two suggested technical changes that were accepted by the committee. One change corrected a numeration error based on a prior draft of the rule. The other change made language in the rule more consistent throughout. A chart of comments received and the committee's responses is attached at page 8.

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.

Fiscal 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 (e)(1)(A) of the rule, as well as the provision in subdivision (e)(1)(B) allowing specified parties to file a noticed request for the experts' reports.

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 5–7
2. Chart of comments, at page 8

Rule 4.130 of the California Rules of Court is amended, effective January 1, 2019, to read:

Rule 4.130. Mental competency proceedings

(a)–(c) * * *

(d) Examination of defendant after initiation of mental competency proceedings

(1) * * *

(2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:

(A)–(G) * * *

(3) Statements made by the defendant during the examination to experts appointed under this rule, and products of any such statements, may not be used in a trial on the issue of the defendant's guilt or in a sanity trial should defendant enter a plea of not guilty by reason of insanity.

(e) Access to experts' reports

(1) The experts' reports are presumptively confidential, except as otherwise provided by law. The experts' reports must be retained in the confidential portion of the court's file. Counsel for the defendant and the prosecution must maintain the experts' reports as confidential.

(A) A court may consider a motion, application, or petition to unseal the experts' reports under rule 2.551(h).

(B) If a defendant who was examined for mental competency under Penal Code section 1369 in a criminal case is charged in a separate criminal case, the defendant, defendant's counsel in the separate criminal case, or the prosecutor in the separate criminal case may file a request with two days' written notice for access to the experts' reports in the criminal case where the examination for mental competency occurred.

(i) If the moving party is the prosecutor, such notice must be given to counsel for the subject defendant in the criminal case where the examination for mental competency occurred.

(ii) If the moving party is the defendant or counsel for the defendant, such notice must be given to the prosecutor in the criminal case where the examination for mental competency occurred.

(iii) The noticed request must include a declaration by the defendant, the defendant's counsel in the separate criminal case, or the prosecutor in the separate criminal case, requesting the experts' reports under (e)(1)(B).

(iv) The request may be granted on an affirmative showing by the moving party that he or she is the defendant in both criminal cases, the defendant's counsel in the separate criminal case involving the same defendant, or the prosecutor in the separate criminal case involving the same defendant.

(C) This rule does not preclude the defendant, the defendant's counsel in a separate criminal case, or the prosecutor in a separate criminal case from filing an ex parte discovery motion for access to the experts' reports when the facts supporting a discovery request are privileged, or as otherwise provided by law. The reasons for seeking an ex parte application for release of the experts' reports must be included in the motion.

(D) In cases stemming from complaints filed before January 1, 2019, the prosecuting attorney, defendant, or counsel for the defendant may request the court clerk to file the experts' reports as confidential.

(f) Trial on mental competency * * *

(g) Posttrial procedure * * *

Advisory Committee Comment

The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to follow in cases where there is a concern whether the defendant is legally competent to stand trial, but the concern does not necessarily rise to the level of a reasonable doubt based on substantial evidence. Before finding a reasonable doubt as to the defendant's competency to stand trial and initiating competency proceedings under Penal Code section 1368 et seq., the court may appoint an expert to assist the court in determining whether such a reasonable doubt exists. As noted in *People v. Visciotti* (1992) 2 Cal.4th 1, 34–36, the court may appoint an expert when it is concerned about the mental competency of the defendant, but the concern does not rise to the level of a reasonable doubt, based on substantial evidence, required by Penal Code section 1367

et seq. Should the results of this examination present substantial evidence of mental incompetency, the court must initiate competency proceedings under (b).

Once mental competency proceedings under Penal Code section 1367 et seq. have been initiated, the court is to appoint at least one expert to examine the defendant under (d). Under no circumstances is the court obligated to appoint more than two experts. (Pen. Code, § 1369(a).) The costs of the experts appointed under (d) are to be paid for by the court as the expert examinations and reports are for the benefit or use of the court in determining whether the defendant is mentally incompetent. (See Cal. Rules of Court, rule 10.810, function 10.)

Subdivision (d)(3), which provides that the defendant's statements made during the examination cannot be used in a trial on the defendant's guilt or a sanity trial in a not guilty by reason of sanity trial, is based on the California Supreme Court holdings in *People v. Arcega* (1982) 32 Cal.3d 504 and *People v. Weaver* (2001) 26 Cal.4th 876.

Although the court is not obligated to appoint additional experts, counsel may nonetheless retain their own experts to testify at a trial on the defendant's competency. (See *People v. Mayes* (1988) 202 Cal.App.4th 908, 917–918.) These experts are not for the benefit or use of the court, and their costs are not to be paid by the court. (See Cal. Rules of Court, rule 10.810, function 10.)

~~The expert reports, unless sealed under rule 2.550, are publicly accessible court documents.~~ 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.

Both the prosecution and the defense have the right to a jury trial. (See *People v. Superior Court (McPeters)* (1995) 169 Cal.App.3d 796.) Defense counsel may waive this right, even over the objection of the defendant. (*People v. Masterson* (1994) 8 Cal.4th 965, 970.)

Either defense counsel or the prosecution (or both) may argue that the defendant is not competent to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel may advocate that defendant is not competent to stand trial and may present evidence of defendant's mental incompetency regardless of defendant's desire to be found competent].) If the defense declines to present evidence of the defendant's mental incompetency, the prosecution may do so. (Pen. Code, § 1369(b)(2).) If the prosecution elects to present evidence of the defendant's mental incompetency, it is the prosecution's burden to prove the incompetency by a preponderance of the evidence. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1484, fn. 12.)

Should both parties decline to present evidence of defendant's mental incompetency, the court may do so. In those cases, the court is not to instruct the jury that a party has the burden of proof. "Rather, the proper approach would be to instruct the jury on the legal standard they are to apply to the evidence before them without allocating the burden of proof to one party or the other." (*People v. Sherik* (1991) 229 Cal.App.3d 444, 459–460.)

SPR18-16
Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By: Nikki P. Miliband President	AM	Subdivision (e)(1) as proposed states, "Counsel must maintain the experts' reports as confidential." The remainder of subdivision (e) et. seq. distinguishes between defendant's counsel and the prosecution. For the sake of clarity, it is suggested that the last sentence of (e)(1) be amended to read as "Defendant's counsel and the prosecution must maintain the experts' reports as confidential." Subdivision (e)(1)(B)(iii) concludes with the phrase "…requesting the experts' reports under subdivision (d)(3)(B)". There is no subdivision (d)(3)(B) for this rule or rule 2.551(h). As written this phrase has no meaning. The reference to the subdivision should either be omitted completely or perhaps simply changed to subdivision (e)(1)(A).	The committee accepts the suggestion and has revised proposed rule 4.130 accordingly. The numeration was from an earlier draft of the proposed rule. The committee has revised proposed rule 4.130 to refer to (e)(1)(B).
2.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

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

Item number: 16

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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) - SPR18-17

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

Staff contact (name, phone and e-mail): Amy Kimpel, 415-865-7995, amy.kimpel@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

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Criminal Procedure: Determination of Probable Cause Under Penal Code Section 1368.1(a)(2)

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 4.131

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 10, 2018

Contact
Amy Kimpel, 415-865-7995
amy.kimpel@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council adopt rule 4.131 of the California Rules of Court to implement recent legislation which allows a prosecuting attorney to request a probable cause determination for a defendant who is incompetent to stand trial in order to meet criteria needed to establish a conservatorship over a defendant. The new rule would establish procedures for these determinations of probable cause.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council adopt California Rules of Court, rule 4.131, effective January 1, 2019, to establish procedures for determinations of probable cause under Penal Code section 1368.1(a)(2).

The text of the proposed rule is attached at page 4.

Relevant Previous Council Action

The Judicial Council has taken no previous action to implement this legislation.

Analysis/Rationale

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.

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 includes the following procedural requirements:

- 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 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.

Policy implications

The committee considered how best to implement the new legislation and provide appropriate guidance to courts with respect to notice and transcript preparation requirements.

Comments

This proposal circulated for public comment during the spring 2018 cycle. A total of two comments were received. The Superior Court of San Diego County and the Orange County Bar Association both agreed with the proposal. A chart with all comments received and the committee's responses is attached at page 5.

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.

Fiscal 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.

Attachments and Links

1. Cal. Rules of Court, rule 4.131, at page 4
2. Chart of comments, at page 5
3. Link A: Senate Bill 684 (Stats. 2017, ch. 246), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB684*

Rule 4.131 of the California Rules of Court is adopted, effective January 1, 2019, to read:

Rule 4.131. Probable cause determinations under section 1368.1(a)(2)

(a) Notice of a request for a determination of probable cause

The prosecuting attorney must serve and file notice of a request for a determination of probable cause on the defense at least 10 court days before the time appointed for the proceeding.

(b) Judge requirement

A judge must hear the determination of probable cause unless there is a stipulation by both parties to having the matter heard by a subordinate judicial officer.

(c) Defendant need not be present

A defendant need not be present for a determination of probable cause to proceed.

(d) Application of section 861

The one-session requirement of section 861 does not apply.

(e) Transcript

A transcript of the determination of probable cause must be provided to the prosecuting attorney and counsel for the defendant consistent with the manner in which a transcript is provided in a preliminary examination.

SPR18-17

Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By: Nikki P. Miliband President	A		No response required.
2.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A		No response required.

Item number:17

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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 - SPR18-18

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:
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

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Criminal Procedure: Dismissal of Penal Code Section 647f Convictions

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-404 and CR-405

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 6, 2018

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

Executive Summary

The Criminal Law Advisory Committee recommends approving two new optional forms in response to recent legislation that invalidates convictions for violations of Penal Code section 647f (felony prostitution) and outlines a petition and application process for the dismissal of section 647f convictions. The proposed forms incorporate the new statutory basis for resentencing and dismissal relief.

Recommendation

The Criminal Law Advisory committee recommends that the council, effective January 1, 2019, approve the following optional forms:

1. *Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-404), which may be used by persons currently serving or having completed eligible sentences, incorporates the new statutory basis for relief under section 1170.22 and 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; and

2. *Order After Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-405), which provides the court with the ability to:

   - Grant the requested relief; or
   - When applicable, resentence the petitioner/applicant.

The new forms are attached at pages 4–5.

Relevant Previous Council Action

None.

Analysis/Rationale

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. Penal Code section 1170.22(b) specifically states that, "[i]f the court's records show that the petitioner was convicted for a violation of Section 647f as it read on December 31, 2017, the court shall vacate the conviction and resentence the person for any remaining counts." The Criminal Law Advisory Committee recommends two optional forms to be used for petitioners/applicants to request the relief under Penal Code section 1170.22. The statute, in subdivision (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."

Comments

The proposal circulated for comment from April 9 to June 8, 2018. A total of three comments were received. The Superior Court of San Diego County and the Orange County Bar Association both agreed with the proposal. Mr. De la Isla, a principal analyst with the Superior Court of Orange County, did not indicate his position but provided numerous suggestions in response to the invitation to comment's Request for Specific Comments, including the following two suggestions:

1. After noting that some Judicial Council forms are written in "plain English" and in a consistent format but that the proposed forms were not, he suggested converting the proposed forms to the easier-to-read format. The committee declined the suggestion to convert proposed forms CR-404 and CR-405 into "plain English" forms at this time but will retain the suggestion for consideration at a later date when the committee plans to review a number of Judicial Council criminal forms for possible conversion into "plain English."

2. After noting that the *Order* (form CR-405), as drafted, did not clearly provide the court with an option to deny the petition, although the court could make a notation in item 1(d) or 2(c),

"Other," he suggested providing the court with a checkbox option to clearly denote when the court denies the petition on the basis that the petitioner is ineligible for the requested relief The committee agreed and included these revisions to proposed form CR-405 as items 1(e) and 2(d).

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 unique needs, while still providing the convenience of standard forms for those courts that choose to use them.

Under rule 1.35(a) of the California Rules of Court, courts will be required to accept petitions/applications submitted on the proposed optional Judicial Council form even if they develop their own petition and order forms.

The committee considered including an item in the *Order* for the court to order the conviction sealed. The committee did not include a sealing provision because the relevant statutes are silent on whether the records of conviction are to be sealed.

Fiscal 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.

Attachments and Links

1. Revised forms CR-404 and CR-405, at pages 4–5
2. Chart of comments, at pages 6–7
3. Link A: Senate Bill 239, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB239*

SPR18-18

Criminal Procedure: Judicial Council Forms for Dismissal of a Conviction of a Violation of Penal Code Section 647f

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

	Commentator	Position	Comment	Committee Response
1.	De la Isla, Albert Principal Analyst IMPACT Team—Criminal Operations Superior Court of California, County of Orange	N/I	Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so please quantify. It is not anticipated that it will provide cost savings to the Orange County Superior Court due to the extremely low number of filings for PC 647f. What would the implementation requirements be for the courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Due to the extremely low number of filings for PC 647f, the Orange County Superior Court will process this petition / application (if received) on an ad hoc basis, and will not pursue changes in processes or systems due to the minimal expected volume. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? I believe it will work well with courts of different sizes. The volume is expected to be minimal, and the form and order are easy to understand.	• No response required. • No response required. • No response required. • No response required. • No response required.

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

SPR18-18

Criminal Procedure: Judicial Council Forms for Dismissal of a Conviction of a Violation of Penal Code Section 647f

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

	Commentator	Position	Comment	Committee Response
			Some forms are written in plain English and in a consistent format (similar to Civil forms) and this one is not. Suggest converting to that easy to read form for the petition and order. Also, on the order, there is not specific place to deny it, the only reason we would do so is if the conviction was not for 647f, or is it anticipated it would be entered in the Other section of the form?	• The committee declines the suggestion to convert proposed forms CR-404 and CR-405 into "plain English" forms at this time, but will retain the suggestion for consideration at a later date when the committee plans to review a number of Judicial Council criminal forms for possible conversion into "plain English." • The committee accepts the suggestion and has revised proposed form CR-405 accordingly.
2.	Orange County Bar Association By: Nikki P. Miliband President	A		No response required.
3.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	DRAFT Not approved by the Judicial Council 2018-02-27
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL (Pen. Code, § 1170.22)	*FOR COURT USE ONLY* 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 under 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:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER/APPLICANT)

Form Approved for Optional Use
Judicial Council of California
CR-404 [New January 1, 2019]

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **2018-03-19**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
ORDER AFTER PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL (Pen. Code, § 1170.22)	*FOR COURT USE ONLY* 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 for 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:
   e. ☐ The petition is **DENIED**. The petitioner is ineligible for the requested relief.

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:
   d. ☐ The application is **DENIED**. The applicant is ineligible for the requested relief.

IT IS SO ORDERED.

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
CR-405 [New January 1, 2019]

Item number:18

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Petition to Seal Arrest and Related Records - SPR18-19

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:
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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Criminal Procedure: Petition to Seal Arrest and Related Records

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-409, CR-409-INFO, and CR-410

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 10, 2018

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

Executive Summary

The Criminal Law Advisory Committee recommends the Judicial Council approve three new optional forms, including an information sheet, in response to recent legislation that added section 851.91 to the Penal Code. (Sen. Bill 239; Stats. 2017, ch. 537). Section 851.91 outlines the procedure for an individual who suffered an arrest that did not lead to a conviction to file a petition to have the arrest and related records sealed. Penal Code section 851.91(b)(3) directs the Judicial Council to develop forms to incorporate the new statutory basis for resentencing and dismissal relief. Since a significant number of petitioners are likely to 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.

Recommendation

The Criminal Law Advisory committee recommends that the Judicial Council, effective January 1, 2019, approve:

1. *Petition to Seal Arrest and Related Records (Pen. Code, § 851.91)* (form CR-409);

2. *Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)* (form CR-410); and
3. *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91* (form CR-409-INFO).

The forms are attached at pages 5–8.

Relevant Previous Council Action

The Judicial Council has not previously circulated the proposed forms for public comment.

Analysis/Rationale

Policy implications

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. Penal Code section 851.91(b)(3) directs the Judicial Council to develop forms to incorporate the new statutory basis for resentencing and dismissal relief.[1] Since a significant number of petitioners are likely to 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.

The forms

The *Petition* incorporates the new statutory basis for relief under Penal Code section 851.91 and allows the petitioner to:

- Provide information about the arrest the petitioner is requesting to be sealed;
- Request relief as a matter of right; and
- Request relief in the interests of justice.

The 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;

[1] Subdivision (b)(3) states, "The Judicial Council shall furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this section. The petition form shall include all of the information required to be included in the petition by paragraph (1) of subdivision (b), shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the petition form is available in additional languages and the Internet Web site where the form is available in alternative languages. The forms shall include notice of other means to address arrest records, including a determination of factual innocence under Section 851.8 and deeming an arrest a detention under Section 849.5."

- 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.

The 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.

Comments

A total of six comments were received. Three commenters, including the Superior Court of San Diego County and the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee, agreed with the proposal. The Superior Court of Ventura County agreed with the proposal if modified, and provided two suggestions that the committee accepted. Mr. Albert De la Isla, a principal analyst with the Superior Court of Orange County, and an anonymous commenter also provided several comments. The comment chart includes the committee's responses to these comments, several of which the committee accepted.

Mr. De la Isla suggested adding to the *Petition* and *Order* "Diversion sealing" of records under Penal Code sections 1000.4 and 1001.9, based on local forms that the Superior Court of Orange County uses for petitions and orders to seal records. He noted that the court added Diversion sealings "so that we had one all-inclusive form as the advisements are all the same." The committee considered whether to include record sealing under sections 1000.4 and 1001.9 in the same forms as record sealing under section 851.91, and determined that the forms would be more accessible for self-represented litigants, without placing an undue burden on courts, if they solely addressed relief under section 851.91.

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 unique needs, while still providing the convenience of a standard form for those courts that choose to use them. Under rule 1.35(a) of the California Rules of Court, courts will be required to accept petitions submitted on the proposed optional Judicial Council form even if they develop their own petition and order forms.

The committee also considered including all the qualifying factors for relief as a matter of right in the petition form, 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 make the petition process more accessible to petitioners without placing an undue burden on the courts. The qualifying factors for relief as a matter of right are listed in form

CR-409-INFO, *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91*, as background information for petitioners.

Fiscal 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.

Attachments and Links

1. Forms CR-409, CR-409-INFO, and CR-410, at pages 5–8.
2. Chart of comments, at pages 9–13.

CR-409 Petition to Seal Arrest and Related Records (Pen. Code, § 851.91)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
2018-03-19

1 Your Information

a. Petitioner *(the person who is filing this petition):*

Name: _____
Last *First* *MI*

Date of birth: _____ *(mm/dd/yyyy)*

Street address: _____
Street

_____ _____ _____
City *State* *Zip*

Mailing address *(if you have a lawyer for this case, give your lawyer's information):*

_____
Street

_____ _____ _____
City *State* *Zip*

Phone: _____

E-mail *(if available):* _____

State Bar number: _____

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. _____

2 Notice of Court Hearing

A court hearing is scheduled on this petition as follows:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:

_____
_____
_____

If an interpreter is needed, please specify the language: _____

3 Information About Your Case

a. Date of the arrest you are requesting to be sealed: _____ *(mm/dd/yyyy)*

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 (district attorney/city attorney) 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.

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 this arrest (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: hardship and difficulties caused by the arrest; statements or evidence regarding your good character; statements or evidence regarding the arrest; your record of convictions; or any other important factors. You may provide statements or evidence from you, from others, or both.)*

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

CR-409-INFO Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91

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 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 make 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 from you 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.

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. 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.

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.

Must 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. After you have served the petition on the prosecutor and the law enforcement agency, you will need to file a "proof of service" with the court.

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.

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.*

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 prefiling diversion program under section 851.87.

CR-410 Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)

Clerk stamps date here when form is filed.

DRAFT
not approved by the
Judicial Council
2018-03-19

(1) Name: _____
Last *First* *MI*

Mailing address: _____
Street

_____ _____ _____
City *State* *Zip*

(2) 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 matter shall be sealed under the provisions of section 851.91, 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. _____

(3) ☐ 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 judicial officer

This is a Court Order.

SPR18-19

Criminal Procedure: Petition to Seal Arrest and Related Records

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

	Commentator	Position	Comment	Committee Response
1.	Anonymous	A	These comments focus on the draft form CR-409. Here are some suggested revisions to this form. These suggestions are intended to 1) help the person completing the form, 2) help the courts, and 3) limit data errors or omissions that may be associated with the form. Section: "1 Your Information" _____ Consider relabeling “1” and “a.” as follows: 1 “Petitioner Information”; then “a. Petitioner (the person seeking to seal an arrest)”. "Name" - Consider structuring this field with separate lines for Last name, First name, Middle initial "Date of birth" - Structure field as mm/dd/yyyy Section: "2 Information About Your Case" _____ Consider relabeling "2" as follows: "Information about the Case" "Date of the arrest..." - Structure field as mm/dd/yyyy "e." Consider revising "...from the prosecutor or the court" to "from the district attorney/prosecutor or the court" "g." Consider revising "If the prosecutor" to "If the district attorney/prosecutor"	• The committee declines the suggestion because the “plain English” format is intended to aid self-represented litigants. • The committee accepts the suggestion. • The committee accepts the suggestion. • The committee declines the suggestion because the “plain English” format is intended to aid self-represented litigants. • The committee accepts the suggestion. • The committee accepts the suggestion. • The committee accepts the suggestion.

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

SPR18-19

Criminal Procedure: Petition to Seal Arrest and Related Records

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

	Commentator	Position	Comment	Committee Response
			"h." Revise the first option from "I am entitled to have the arrest described in item 1 of this petition..." to "I am entitled to have this arrest sealed as a …" "h." Revise the second option to read: "I request that this arrest be 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 the following: 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; or anything else you consider important.)" Thank you for your consideration of these comments.	• The committee accepts the suggestion. • The committee declines the suggestion as the instructions are worded to aid self-represented litigants.
2.	De la Isla, Albert Principal Analyst IMPACT Team—Criminal Operations Superior Court of California, County of Orange	N/I	**CR – 409 Petition** Suggest adding hearing date, department and time on the petition so that when it is served on the prosecutor or police agency, they have notice of the hearing date. On our local form, we added the specific reasons why it is a matter of right for the defendant to 3. I am entitled to have my arrest sealed as a matter of right: a. ☐ No complaint was filed. The statute of limitations has run on every offense upon which the arrest was based and the prosecutor has not filed an accusatory pleading based on the arrest. b. ☐ A complaint was filed. The charge(s) have been dismissed and charges may not be refiled. c. ☐ A complaint was filed. No conviction occurred and I have been acquitted of all charges. d. ☐ Pursuant to Penal Code § 1000.4 & 1001.9.	• The committee accepts the suggestion. • The committee declines the suggestion as this information is already provided on the CR-409-INFO form in a somewhat different format.

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

	Commentator	Position	Comment	Committee Response
			We also added Diversion sealings as provided for in the revised code so that we had one all-inclusive form as the advisements are all the same. **CR-409 – Instruction Sheet** Instruction Sheet does state that the prosecutor or law enforcement agency needs to be served at least 15 days before the hearing date, but does not state that proof of service needs to be filed with the court. Proof should be filed with the court. **CR – 410 Order** Suggest adding to the order for sealing a statement that the record is ordered sealed pursuant to the provisions of 851.92. Our form states the following: *The record of arrest is deemed not to have occurred, the petitioner may answer any question relating to the sealed arrest accordingly, and the petitioner is released from all penalties and disabilities resulting from the arrest, except as provided in Section 851.92 and as follows:* Since we also included diversion dismissals on this form, we added:	• The committee declines the suggestion as the forms are more accessible for self-represented litigants, without placing an undue burden on courts, if they solely address relief under section 851.91. • The committee accepts the suggestion. • The committee declines the suggestion as this information is already provided on form CR-410 in a somewhat different format. • The committee declines the suggestion as the forms are more accessible for self-represented litigants, without placing an undue burden on courts, if they solely address relief under section 851.91.

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

SPR18-19
Criminal Procedure: Petition to Seal Arrest and Related Records
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			☐ **Successful Completion of Diversion:** The petitioner may, except as specified in Section 851.90 subdivisions (b) and (c), indicate in response to any question concerning the petitioner's prior criminal record that they were not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense. • Subject to subdivisions (b) and (c), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate. • The arrest upon which the pretrial diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and does not relieve you of your obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Penal Code Section 830. • This order to seal records pertaining to an arrest has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Penal Code Section 851.92.	
3.	Judicial Council of California Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	A	The JRS notes the following impact to court operations: • This proposal will have minimal impact—the JCC has created the forms needed to conform to the change of law. • The proposal is beneficial in that it leads to increased efficiency: petitions to seal arrest records will increase and the forms will streamline the process.	No response required.
4.	McCready, John P. Citizen	D	The proposed form does NOT detail an option for: "The arrest did NOT result in a subsequent court filing/conviction of ANY criminal charge (e.g. for a "Failure to Appear" arrest warrant-P.C.853.7") AND "The arresting charge does not match the CHARGE THAT WAS ACTUALLY FILED BY a City Attorney or Deputy District Attorney.	The committee declines the suggestion as items e., f. and g. provide the petitioner with the option to include this information and explanation.

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

SPR18-19
Criminal Procedure: Petition to Seal Arrest and Related Records
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			PLEASE ADD THESE OPTIONS as they would better detail the intent of SB 393.	
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.
6.	Superior Court of California, County of Ventura By: Cheryl Kanatzar Deputy Executive Officer	AM	On the Petition: add a line for the clerk to include the Hearing date_____, Time_____, and courtroom_____ under the Trial Court Case Number and Trial Court Case Name information. On the Information Sheet:. under What do I do with the petition once I fill it out? ...move the last sentence in the first paragraph," 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," to the end of the 2nd paragraph in that same section.	• The committee accepts the suggestion. • The committee accepts the suggestion.

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
August 20, 2018

To
Rules and Projects Committee

From
Family and Juvenile Law Advisory Committee
Hon. Jerilyn Borack, Co-Chair
Hon. Mark Juhas, Co-Chair

Subject
Appointment Request of VAWEP Sub-Committee Members

Action Requested
Please Approve appointment of VAWEP Sub-Committee Members

Deadline
August 23, 2018

Contact
Lisa Chavez
Senior Analyst
916-643-7021 phone
Lisa.chavez@jud.ca.gov

Tracy Kenny
Attorney
916-263-2838
Tracy.Keny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends the appointment of three members who are not members of the committee to the Violence Against Women Education Project (VAWEP) subcommittee of Family and Juvenile Law Advisory Committee to ensure that the membership remains represents key domestic violence prevention stakeholders.

Background

The Violence Against Women Education Project Planning Committee was formed as a working group of the Family and Juvenile Law Advisory Committee in 2002 and held its first meeting in 2003. Membership in the group was by invitation of the co-chairs of the Family and Juvenile

Law Advisory Committee and was designed to ensure that it could fulfill its charge to oversee the planning process for education programs funded by the federal STOP (Services, Training, Officers, Prosecutors) Violence Against Women Formula Grant Program via the Governor's Office of Emergency Services (OES).

In 2014, the Judicial Council took action to make the VAWEP Planning Committee a standing subcommittee of the Family and Juvenile Law Advisory Committee. At that time, the council approved the membership of the committee and charged it with providing guidance and evaluation of VAWEP grant funded projects and making recommendations to improve court practice and procedure in domestic violence cases as directed by the Family and Juvenile Law Advisory Committee. Since that time some members of the committee have moved on from the organizations that they were representing and as a result, the committee does not have members from those constituencies (see attached roster for current members of the subcommittee).

Recommendation

The Family and Juvenile Law Advisory Committee recommends that appointment of Amanda Martin, Krista Niemczyk, and Sudha Shetty to the VAWEP Subcommittee (see attached Request for Appointment for specific biographical information about these proposed members).

Rationale for Recommendation

The purpose of the Violence Against Women Education Project grant is develop and provide trainings and conduct other activities dedicated to increasing the knowledge of tribal and state court personnel in cases involving violence against women. The Violence Against Women Education Project grant requires that the project team assemble and conduct a minimum of one, preferably two, VAWEP Planning Committee meetings per grant year. Pursuant to the grant, the committee must be comprised of judicial officers, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts to guide project staff in identifying the training needs of California state and tribal court personnel in the area of domestic violence, sexual assault, stalking, dating violence, and human trafficking. The committee should also reflect the ethnic and geographical diversity of the state and ensure representation from rural, central valley, northern and southern California communities.

While the Family and Juvenile Law Advisory Committee has a breadth of expertise, and includes judicial officers and other important stakeholders on domestic violence issues, it only includes one domestic violence advocate and the District Attorney member of the committee is focused on juvenile justice cases rather than domestic violence. For that reason, the committee is asking for the appointment of a representative of the California Partnership to End Domestic Violence

(Krista Niemczyk), a district attorney member who focuses on domestic violence cases (Amanda Martin), and an expert on domestic violence issues and immigrant women (Sudha Shetty). These additional members will bring a diversity of perspective necessary to fulfill the VAWEP mission and the specific grant requirement that the group be comprised of stakeholders including, but not limited to, judges, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts in the field of domestic violence, sexual assault, stalking, dating violence, and human trafficking. In addition to the individuals' professional experience, the individuals are also reflective California's geographical diversity, including rural, central valley, northern and southern California.

JUDICIAL COUNCIL OF CALIFORNIA

Request for Appointment to a Subcommittee

To request the appointment of a non-advisory committee member to a standing subcommittee, lead committee staff, on behalf of the committee chair, should complete a copy of this form for each prospective member, explaining the rationale for the request, and submit it to the Judicial Council internal committee that oversees the advisory committee(s). Once approval is granted by the Judicial Council internal committee, the advisory committee chair can then make an informal appointment to the subcommittee.

Requesting appointment as a member to:

Subcommittee: Violence Against Women Education Project

Subcommittee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Advisory Committee Information

Committee name: Family and Juvenile Law Advisory Committee

Committee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Lead staff: Audrey Fancy and Tracy Kenny

Committee name: N/A Committee chair: _____

Lead staff: _____

Prospective Member Information

Candidate's name: ☐Hon. ☐Mr. ☒Ms. Amanda Martin Title: Senior Attorney

Court/entity/business name: California District Attorneys Association

Particular area of expertise that is relevant to the work of subcommittee:

Amanda Martin currently serves as the Senior Attorney for the California District Attorneys Association. The California District Attorneys Association is the source of continuing legal education and legislative advocacy for its membership. Previously, Ms. Martin served as the Deputy Attorney General for the California Department of Justice, Office of Attorney General for two years. In addition, to role she also served as the Legal-Medical Consultant for the California Department of Justice for two years. Prior to moving to California, she worked for 13 years as the Assistant Attorney General for the Maryland Office of the Attorney General in Baltimore, Maryland. Ms. Martin obtained her Juris Doctorate from the University of Baltimore School of Law and her Bachelor of Science in nursing.

Recommended term of service on the subcommittee:

Check one: ☐ one year ☐ two years ☐ three years
☒ other Effective until the entity (or individual's employer) recommends appointment of a different individual

Rationale for Appointment

Please use this section to provide the rationale for this appointment, any budgeting or cost implications, and additional information that is relevant to the Judicial Council internal committee's response to this appointment request.

The purpose of the Violence Against Women Education Project grant is develop and provide trainings and conduct other activities dedicated to increasing the knowledge of tribal and state court personnel in cases involving violence against women. The Violence Against Women Education Project grant requires that the project team assemble and conduct a minimum of one, preferably two, VAWEP Planning Committee meetings per grant year. Pursuant to the grant, the committee must be comprised of judicial officers, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts to guide project staff in identifying the training needs of California state and tribal court personnel in the area of domestic violence, sexual assault, stalking, dating violence, and human trafficking. The committee should also reflect the ethnic and geographical diversity of the state and ensure representation from rural, central valley, northern and southern California communities.

The committee requests the appointment of individuals bringing a diversity of perspective necessary to fulfill the VAWEP grant requirement, that the group be comprised of stakeholders including, but not limited to, judges, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts in the field of domestic violence, sexual assault, stalking, dating violence, and human trafficking. In addition to the individuals' professional experience, the individuals are also reflective California's geographical diversity, including rural, central valley, northern and southern California. VAWEP Planning Committee membership is voluntary and un-paid.

The Committee meetings include a report of the success of previous grant performance period objectives and trainings needs for the future gran performance period. Based on the recommendations from the VAWEP Planning Committee meeting, new and emerging trends may be taking into consideration in adding and/or deleting to the program objectives/course development and implementation.

Internal Committee Approval

Internal committee name: Judicial Council Rules and Projects Committee

Internal committee chair: Hon. Harry E. Hull, Jr.

On behalf of the internal committee, request for appointment is:
Check one: ☐ approved ☐ disapproved ☐ will be forwarded to the Chief Justice for further consideration

Date: _____

JUDICIAL COUNCIL OF CALIFORNIA

Request for Appointment to a Subcommittee

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Requesting appointment as a member to:

Subcommittee: Violence Against Women Education Project

Subcommittee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Advisory Committee Information

Committee name: Family and Juvenile Law Advisory Committee

Committee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Lead staff: Audrey Fancy and Tracy Kenny

Committee name: N/A Committee chair: _____

Lead staff: _____

Prospective Member Information

Candidate's name: ☐Hon. ☐Mr. ☒Ms. Krista Niemczyk Title: Public Policy Manager

Court/entity/business name: California Partnership to End Domestic Violence

Particular area of expertise that is relevant to the work of subcommittee:

Krista Niemczyk is the Public Policy Manager for the Partnership where she represents domestic violence programs throughout California at various government agencies, including the California State legislature. Through this advocacy, Krista ensures that the voices of domestic violence programs and survivors are heard and reflected in public policies. Before joining the Partnership, Krista was the Public Policy Coordinator at the National Network to End Domestic Violence, where her work focused on advocating for increases in federal funding for domestic and sexual violence programs and reauthorizing the Violence Against Women Act. Previous experiences include working with at-risk youth, which fueled her passion for social policy issues. Krista received her Master's degree in Public Policy with a concentration in Social Policy from American University and received a Bachelor's degree in Social Work from California State University, Long Beach.

Recommended term of service on the subcommittee:

Check one: ☐ one year ☐ two years ☐ three years

☒ other Effective until the entity (or individual's employer) recommends appointment of a different individual

Rationale for Appointment

Please use this section to provide the rationale for this appointment, any budgeting or cost implications, and additional information that is relevant to the Judicial Council internal committee's response to this appointment request.

The purpose of the Violence Against Women Education Project grant is develop and provide trainings and conduct other activities dedicated to increasing the knowledge of tribal and state court personnel in cases involving violence against women. The Violence Against Women Education Project grant requires that the project team assemble and conduct a minimum of one, preferably two, VAWEP Planning Committee meetings per grant year. Pursuant to the grant, the committee must be comprised of judicial officers, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts to guide project staff in identifying the training needs of California state and tribal court personnel in the area of domestic violence, sexual assault, stalking, dating violence, and human trafficking. The committee should also reflect the ethnic and geographical diversity of the state and ensure representation from rural, central valley, northern and southern California communities.

The committee requests the appointment of individuals bringing a diversity of perspective necessary to fulfill the VAWEP grant requirement, that the group be comprised of stakeholders including, but not limited to, judges, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts in the field of domestic violence, sexual assault, stalking, dating violence, and human trafficking. In addition to the individuals' professional experience, the individuals are also reflective California's geographical diversity, including rural, central valley, northern and southern California. VAWEP Planning Committee membership is voluntary and un-paid.

The Committee meetings include a report of the success of previous grant performance period objectives and trainings needs for the future gran performance period. Based on the recommendations from the VAWEP Planning Committee meeting, new and emerging trends may be taking into consideration in adding and/or deleting to the program objectives/course development and implementation.

Internal Committee Approval

Internal committee name: Judicial Council Rules and Projects Committee

Internal committee chair: Hon. Harry E. Hull, Jr.

On behalf of the internal committee, request for appointment is:

Check one: ☐ approved ☐ disapproved ☐ will be forwarded to the Chief Justice for further consideration

Date: _____

JUDICIAL COUNCIL OF CALIFORNIA

Request for Appointment to a Subcommittee

To request the appointment of a non-advisory committee member to a standing subcommittee, lead committee staff, on behalf of the committee chair, should complete a copy of this form for each prospective member, explaining the rationale for the request, and submit it to the Judicial Council internal committee that oversees the advisory committee(s). Once approval is granted by the Judicial Council internal committee, the advisory committee chair can then make an informal appointment to the subcommittee.

Requesting appointment as a member to:

Subcommittee: Violence Against Women Education Project

Subcommittee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Advisory Committee Information

Committee name: Family and Juvenile Law Advisory Committee

Committee chair: Hon. Jerilyn L. Borack, Co-Chair and Hon. Mark A. Juhas, Co-Chair

Lead staff: Audrey Fancy and Tracy Kenny

Committee name: N/A Committee chair: _____

Lead staff: _____

Prospective Member Information

Candidate's name: ☐Hon. ☐Mr. ☒Ms. Sudha Shetty Title: Assistant Dean for International Partnerships and Alliances at the Goldman School of Public Policy at UC Berkeley

Court/entity/business name: UC Berkeley

Particular area of expertise that is relevant to the work of subcommittee:

Sudha Shetty is the Assistant Dean for International Partnerships and Alliances at the Goldman School of Public Policy at U C Berkeley. She is responsible for developing and implementing Global Leadership Programs in partnership with Foreign Governments. Her research area is focused on International Child Abduction and the intersection of Violence Against Women and is a PI on the grant from the Department of Justice. She has also served as the Director of the International Fellowship Program and a graduate faculty at the University of Minnesota's Hubert H. Humphrey Institute of Public Affairs where she managed Fulbright's, Muskie, Bolashak and Govt. of India Fellowships; developed and implemented trainings for these emerging international leaders in the areas of strategic planning, policy development, leadership development, media and communications created partnership with Hennepin County and engaged the directors and department heads as mentors for the Fellows. She speaks

and writes extensively on domestic violence issues facing immigrant women and women of color. She has been a consultant to the law firm of Dorsey & Whitney, L.L.P. on diversity issues and in her former role as Director of the Seattle University Law School's Access to Justice Institute she developed a variety of legal access projects focused on battered women. She was honored by the Washington Women Lawyers Foundation for her work with underserved communities. She has been the recipient of several awards –King County Washington Women Lawyers – Special Contributions to the Judiciary Award; NALP (National Association of Law School Placements – Award of Distinction in Pro Bono and Public Service; Asian Bar Association of Washington - Community Service Award; PSLawNet - the Pro Bono Publico Award; AALS (American Association of Law Schools) - Father Drinan Award for forwarding the ethic of pro bono and public service in law schools through personal service, program design and management. She was a founding member and chair of Chaya, a grass-roots South Asian domestic violence prevention program in Seattle. She is an Alumni of the Asian Pacific Women's Leadership Institute.

Recommended term of service on the subcommittee:

Check one: ☐ one year ☐ two years ☐ three years

☒ other Effective until the individual is no longer willing to serve

Rationale for Appointment

Please use this section to provide the rationale for this appointment, any budgeting or cost implications, and additional information that is relevant to the Judicial Council internal committee's response to this appointment request.

The purpose of the Violence Against Women Education Project grant is develop and provide trainings and conduct other activities dedicated to increasing the knowledge of tribal and state court personnel in cases involving violence against women. The Violence Against Women Education Project grant requires that the project team assemble and conduct a minimum of one, preferably two, VAWEP Planning Committee meetings per grant year. Pursuant to the grant, the committee must be comprised of judicial officers, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts to guide project staff in identifying the training needs of California state and tribal court personnel in the area of domestic violence, sexual assault, stalking, dating violence, and human trafficking. The committee should also reflect the ethnic and geographical diversity of the state and ensure representation from rural, central valley, northern and southern California communities.

The committee requests the appointment of individuals bringing a diversity of perspective necessary to fulfill the VAWEP grant requirement, that the group be comprised of stakeholders including, but not limited to, judges, attorneys, district attorney representatives, victim advocates, tribal representatives and other subject matter experts in the field of domestic violence, sexual assault, stalking, dating violence, and human trafficking. In addition to the individuals' professional experience, the individuals are also reflective California's geographical diversity, including rural, central valley, northern and southern California. VAWEP Planning Committee membership is voluntary and un-paid.

The Committee meetings include a report of the success of previous grant performance period objectives and trainings needs for the future gran performance period. Based on the recommendations from the VAWEP Planning Committee meeting, new and emerging trends may be taking into consideration in adding and/or deleting to the program objectives/course development and implementation.

Internal Committee Approval

Internal committee name: Judicial Council Rules and Projects Committee

Internal committee chair: Hon. Harry E. Hull, Jr.

On behalf of the internal committee, request for appointment is:

Check one: ☐ approved ☐ disapproved ☐ will be forwarded to the Chief Justice for further consideration

Date: _____

Violence Against Women Education Project Planning Committee

As of August 20, 2018

Hon. Jerilyn L. Borack, Co-Chair
Judge of the Superior Court of California,
County of Sacramento

Hon. Sue Alexander (Ret.)
Commissioner of the Superior Court of
California, County of Alameda

Hon. Susan M. Breall
Judge of the Superior Court of California,
County of San Francisco

Ms. Emberly Cross
Coordinating Attorney
Cooperative Restraining Order Clinic

Ms. Mary Majich Davis
Chief Deputy Executive Officer
Superior Court of California,
County of San Bernardino

Hon. Sherrill A. Ellsworth (Ret.)
Judge of the Superior Court of California,
County of Riverside

Hon. Suzanne Gazzaniga
Judge of the Superior Court of California,
County of Placer

Hon. Scott M. Gordon
Supervising Family Law Judge of the Superior
Court of California, County of Los Angeles

Hon. Mary Anne Grille (Ret.)
Judge of the Superior Court of California,
County of Santa Clara

Ms. Sandra Henriquez
Executive Director
California Coalition Against Sexual Assault
(CALCASA)

Hon. Joni T. Hiramoto
Judge of the Superior Court of California,
County of Contra Costa

Hon. Sam Lavorato, Jr.
Judge of the Superior Court of California,
County of Monterey

Mr. Rick Layon
Layon & Holck

Hon. Mark A. Juhas, Co-Chair
Judge of the Superior Court of California,
County of Los Angeles

Ms. Patricia Lee
Managing Attorney
San Francisco Public Defender's Office

Ms. Nancy O'Malley
District Attorney
Alameda County District Attorney's Office

Ms. Lynda Smallenberger
Executive Director
Kene Me-Wu Family Healing Center, Inc.

Deputy Roena Spiller
San Mateo County Sheriff's Office
North Coast Patrol Bureau

Mr. Mark Varela
Chief Probation Officer
Ventura County Probation Agency

Hon. Glenda Veasey
Commissioner of the
Superior Court of California,
County of Los Angeles

Hon. Christine Williams
Chief Judge of the Shingle Springs
Tribal Court

Violence Against Women Education Project Planning Committee

As of August 20, 2018

JUDICIAL COUNCIL STAFF TO THE COMMITTEE

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Ms. Laural Ayala
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San Francisco, California 94102
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Item number:19

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018

Title
Family Law: Income and Expense Declaration

Rules, Forms, Standards, or Statutes Affected
Revise form FL-150

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 8, 2018

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov
Bonnie R. Hough, 415-865-7668
bonnie.hough@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends making time-sensitive revisions to *Income and Expense Declaration* (form FL-150) to implement recent changes to the tax treatment of alimony (spousal support) under the Internal Revenue Code (IRC) of 1986. In addition, the committee recommends updating the reference to a military housing allowance acronym in the form to clarify the meaning of the term.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise form FL-150 to reflect:

1. Amendments made by the Internal Revenue Code of 1986, effective December 31, 2018, that relate to spousal support judgments; and
2. Changes to the terms used to denote military allowances that are attributable as income to a party in a family law proceeding.

The revised form is attached at pages 7–10.

Relevant Previous Council Action

Income and Expense Declaration (form FL-150) was last revised, effective January 1, 2007, for reasons not relevant to the recommendations in this report.

Analysis/Rationale

Background

The Tax Cuts and Jobs Act (Pub.L. No. 115-97 (Dec. 22, 2017) 131 Stat. 2054) amends the spousal support provisions of the 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 a divorce or separation instrument that expressly provides that the amendments made by this section of the IRC apply to such modifications.

The California Revenue and Taxation Code has not been amended to reflect the new federal tax treatment of spousal support. Thus, it appears that spousal support (and domestic partner support)[1] will continue to be taxable as income to the recipient and tax deductible to the payor for state tax purposes after December 31, 2018.

Changes regarding spousal support items

Item 5 (Income) on form FL-150 requires the party completing the form to list all income received in the past 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 in the past 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. A party receiving spousal support under a divorce or separation decree entered *on or 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 nontaxable 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 nondeductible to the payor (and taxable to the recipient); otherwise, the payments will remain tax deductible to the payor (and taxable to the

[1] 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.

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 ☐ federally taxable

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 previoius month (from the date the form was signed). To conform to the new tax law, the committee proposed the following change to item 10e of the form:

Spousal support that I pay by court order from a different marriage ☐ federally 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.*l*); 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,[2] such as "Basic Allowance for Subsistence." The committee proposes that the term "military BAQ" be replaced with "military allowances." This change will help persons who are not in the military understand what the example refers to and avoid confusion among military members as to why only one allowance is referenced.

Policy implications

The recommendations in the report simply implement recent federal changes to the IRC as to the spousal support provisions of a family law judgment. The federal income tax changes specifically impact parties in a family law proceeding without implicating judicial branch policies.

Comments

Proposed changes to form FL-150. The proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

The committee received comments from 10 individuals or organizations. Of these commenters, 7 agreed with the proposal without specific comments, 2 expressed no position but included comments and suggestions to clarify the meaning of the new checkboxes in items 5 and 10, and 1 expressed no position but asked a question about the change in the federal tax law. No

[2] The types of BAH are listed at *http://militarypay.defense.gov/Pay/Allowances/BAH_Types.aspx.*

commenter disagreed with the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 12–17.

Spousal support items. Two commenters (California Department of Child Support Services (CDCSS) and Child Support Directors Association of California (CSDAC)) commented specifically about item 5. As to spousal support, they requested that the check box for "federal taxable" be deleted and replaced with "Spousal support __From this marriage ___ from a different marriage ___ ordered before 1/1/19____ordered changed after 12/31/18 **and** did state a different tax impact to the parties." CSDAC also suggested including a check box for "initial order made before 1/1/2019."

In the experience of these commenters, self-represented litigants do not fully understand the tax status of payments being paid or received. In addition, they stated that the proposed replacement language would prompt local child support agencies, and potentially the courts, to review the spousal support orders made in an individual case more closely.

The committee appreciates the commenters' suggestions relating to item 5. After discussion, the committee prefers to implement a more concise change to these areas of the form by adding a single check box that states "☐ federally taxable*" and "federally tax deductible,*" respectively. The following instruction would then be included at the bottom of the same page:

> * Check the box if the spousal support order or judgment was executed by the parties and the court before January 1, 2019, or if a court-ordered change maintains the spousal support payments as taxable income to the recipient and tax deductible to the payor.

Other comments. Three courts who commented stated that three months is sufficient time for them to implement the recommended changes to form FL-150, that no cost savings are associated with the changes, and that the recommendations would work for courts of various sizes. One court also indicated it would need to train staff, revise procedures, and create new codes for case management to implement the changes to form FL-150.

Suggestions for future improvements to form FL-150. The committee also requested that commenters include suggestions about how to improve the form in a future cycle. Of the 10 individuals or organization who commented about the proposed technical changes, 7 included suggestions for substantive changes in a future cycle. A chart with the full text of the comments received is included as Attachment A.

Some of the suggestions included:

- Creating a new, simplified *Declaration Regarding Child Support Factors* that could be attached by the parties to a *Request for Order* (form FL-300) or function as a standalone document;
- Simplifying the language on existing form FL-150 overall to make it easier for unrepresented litigants to complete;

- Revising the form so that it collects only core information applicable to all case types;
- Revising item 13 to require a party to list its actual expenses, estimated expenses, and proposed needs;
- Adding a section on other fees, i.e., fees for experts or evaluators; and
- Including an item for a party to indicate if he or she is a beneficiary of a trust.

As indicated in the invitation to comment, the above suggestions will not be implemented effective January 1, 2019, but will be considered by the committee in the future.

Alternatives Considered

Circulation

Revisions to form FL-150 are required to implement the recent changes to the tax treatment of alimony (spousal support) in the Internal Revenue Code of 1986, effective January 1, 2019. Nonetheless, 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; and

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 because 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.

New language on the *Income and Expense Declaration*

The committee also considered how to draft the language on page 2 of form FL-150 to clarify the meaning of "federally taxable" and federally tax deductible" in item 5. Specifically, the committee needed to determine whether the changes to the federal law apply to spousal support court orders made before the judgment for divorce (for example, temporary or pendente lite orders) or whether the changes apply only to judgments.

The committee received guidance from a United States Tax Court Memorandum Findings of Fact and Opinion, which found that a pretrial order for spousal support fell within the meaning of Internal Revenue Code section 71(b)(2)(C)(i) because it was otherwise connected with a decree of divorce…that produced the judgment, and therefore was a written instrument incident to a decree of divorce or separate maintenance.[3] Based on this finding, the committee determined that it is appropriate to draft the language on page 2 of form FL-150 to include an order or a judgment for spousal support.

[3] *Anderson v. Commissioner* (2016) 47 T.C., *www.leagle.com/decision/intco20160314d20.*

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in minor costs incurred by the courts to revise the form, train staff, and create new codes for case management programs. 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.

Attachments and Links

1. Form FL-150, at pages 7–10
2. Chart of comments, at pages 11–16
3. Attachment A: Chart of comments for proposed future revisions
4. Attachment B: Pub.L. No. 115-97, § 11051
5. Link to Pub.L. No. 115-97, at *www.congress.gov/bill/115th-congress/house-bill/1*

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
OTHER PARENT/CLAIMANT:		
INCOME AND EXPENSE DECLARATION		CASE NUMBER:

DRAFT
Not approved by the Judicial Council
7/09/2018

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)

Form Adopted for Mandatory Use
Judicial Council of California
FL-150 [Rev. January 1, 2019]

Family Code, §§ 2030–2032, 2100–2113, 3552, 3620–3634, 4050–4076, 4300–4339
www.courts.ca.gov

PETTIONER/PLANTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:

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) ☐ currently receiving	$	
e. Spousal support ☐ from this marriage ☐ from a different marriage ☐ federally taxable*	$	
f. Partner support ☐ from this domestic partnership ☐ from a different domestic partnership	$	
g. Pension/retirement fund payments	$	
h. Social Security retirement (not SSI)	$	
i. Disability: ☐ Social Security (not SSI) ☐ State disability (SDI) ☐ Private insurance	$	
j. Unemployment compensation	$	
k. Workers' compensation	$	
l. Other (military allowances, royalty payments) *(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 ☐ federally 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, ☐ real and ☐ personal *(estimate fair market value minus the debts you owe)*	$

* Check the box if the spousal support order or judgment was executed by the parties and the court before January 1, 2019, or if a court-ordered change maintains the spousal support payments as taxable income to the recipient and tax deductible to the payor.

PETTIONER/PLANTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:

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.				☐ Yes ☐ No
b.				☐ Yes ☐ No
c.				☐ Yes ☐ No
d.				☐ Yes ☐ No
e.				☐ Yes ☐ No

13. **Average monthly expenses** ☐ Estimated expenses ☐ Actual expenses ☐ Proposed needs

a. Home:
   (1) ☐ Rent or ☐ mortgage..... $ _____
   If mortgage: $ _____
   (a) average principal: $ _____
   (b) average interest: $ _____
   (2) Real property taxes..... $ _____
   (3) Homeowner's or renter's insurance (if not included above)..... $ _____
   (4) Maintenance and repair..... $ _____
b. Health-care costs not paid by insurance..... $ _____
c. Child care..... $ _____
d. Groceries and household supplies..... $ _____
e. Eating out..... $ _____
f. Utilities (gas, electric, water, trash)..... $ _____
g. Telephone, cell phone, and e-mail..... $ _____
h. Laundry and cleaning..... $ _____
i. Clothes..... $ _____
j. Education..... $ _____
k. Entertainment, gifts, and vacation..... $ _____
l. Auto expenses and transportation (insurance, gas, repairs, bus, etc.)..... $ _____
m. Insurance (life, accident, etc.; do not include auto, home, or health insurance)..... $ _____
n. Savings and investments..... $ _____
o. Charitable contributions..... $ _____
p. Monthly payments listed in item 14 *(itemize below in 14 and insert total here)*..... $ _____
q. Other *(specify):* $ _____
r. **TOTAL EXPENSES** (a–q) *(do not add in the amounts in a(1)(a) and (b))* $ _____
s. **Amount of expenses paid by others** $ _____

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)

PETTIONER/PLANTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:

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 *(specify below):*	$

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 *(specify):*		
(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):*

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Family Law: Income and Expense Declaration (technical revisions to form FL-150)

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel Rancho Cordova	N/I	The draft Income and Expense Declaration (FL-150) appears to meet most of the limited objectives the Judicial Council of California (JCC) is trying to accomplish as part of this expedited cycle. More specifically, while the proposed language to capture the military allowances is clear, the spousal support clarification is not. It has been our experience that unrepresented litigants struggle to draw appropriate legal conclusions even when given plain language instructions. For that reason, we would recommend that the JCC consider soliciting relevant factual information about the spousal support orders made by the court instead. This information would give the LCSAs and the courts the information they need to identify which tax status applies to the spousal support ordered. If the JCC concurs with this recommendation, it could consider adding the language to "Spousal Support" section of the Income and Expense Declaration to solicit factual information. Item 5.e. could be revised as follows: Spousal support __From this marriage ___ from a different marriage ___ <u>ordered before 1/1/19 ____ordered changed after 12/31/18</u> **<u>and</u>** <u>did state a different tax impact to the parties</u>.	No response required. No response required. The committee appreciates the commenter's suggestions for improving the form, and agrees that it should be revised to make it clear for all users when the proposed new check boxes apply to the case. The committee appreciates the commenter's suggestions relating to item 5.e. and item 5.*l*. After discussion, the committee prefers to implement a more concise change to these areas of the form by adding a single check box that

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

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Family Law: Income and Expense Declaration (technical revisions to form FL-150)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Item 10.e. could be revised as follows: Spousal support that I pay by court order from a different marriage ___ordered before 1/1/19 ___order changed after 12/31/18 and did state a different tax impact to the parties. However, if the JCC prefers to include clarifying instructions that relate to the federal taxation issue, our Committee would recommend the revision that follows: *Check the box if the court made the initial spousal support order before January 1, 2019, of if a court-ordered change to that spousal support order was made after December 31, 2018, and does not state any different tax impact to the parties. Adding this new check box will at least prompt the LCSAs, and potentially the courts, to review the spousal support orders made in an individual case more closely. The commenter also submitted suggestions for future changes to this form. See attached comment chart for proposed future revisions.	states "___federally taxable*" and "federally deductible*," respectively. Then, at the bottom of the same page, including the following instruction: "*Check the box if the spousal support order or judgment was executed before January 1, 2019, or if a court-ordered change maintains the spousal support payments as taxable income to the recipient and tax deductible to the payor." The committee is concerned that a party may not readily understand the meaning of "tax impact to the parties," as the commenter suggests, whereas, a party may well know whether he or she has paid federal income tax on spousal support payments received or has been able to deduct spousal support payments made during a given tax year that were based on a court order or judgment. The committee agrees with the commenter, but believes that its recommended changes more concisely call the issue to the attention of the judicial officer making an order or issuing a judgment for support, attorney's fees, or other financial matter that is at issue in the hearing or trial. The committee appreciates the suggestions for future changes to the form.
2.	California Lawyers Association by Saul Bercovitch, Director of Governmental Affairs	A	No specific comment.	No response required.

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Family Law: Income and Expense Declaration (technical revisions to form FL-150)
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	Commentator	Position	Comment	Committee Response
	And Stephen D. Hamilton, Legislation Chair at Flexcom San Francisco			
3.	Hon. Enrique Camarena, Judge, Superior Court of San Diego County	A	No specific comment. The commenter also submitted suggestions for future changes to this form. See attached comment chart for proposed future revisions.	No response required. The committee appreciates the suggestions for future changes to the form.
4.	Child Support Directors Association of California (CSDA) by Ronald Ladage, Chair CSDA Judicial Council Forms Committee and Assistant Director/Chief Attorney, El Dorado County DCSS	N/I	*In reviewing the proposed change, the CSDA Judicial Council Committee has identified options for your consideration. Of the two options, the Committee believes the first option would better serve the local child support agencies (LCSAs) and the courts. It has been our experience that unrepresented litigants struggle to draw appropriate legal conclusions even when given plain language instructions. For that reason, we would recommend that the JCC consider soliciting relevant factual information about the spousal support orders made by the court instead. This information would give the LCSAs and the courts the information they need to identify which tax status applies to the spousal support ordered. If the JCC concurs with this recommendation, it could consider adding the language to "Spousal Support" section of the Income and Expense Declaration to solicit factual information.	No response required. The committee appreciates the commenter's suggestions for improving the form, and agrees that it should be revised to make it clear for all users when the proposed new check boxes apply to the case.

	Commentator	Position	Comment	Committee Response
			Item 5.e. could be revised as follows: Spousal support __From this marriage ___ from a different marriage ___ ordered before 1/1/19 ____ordered changed after 12/31/18 **and** did state a different tax impact to the parties. Item 10.e. could be revised as follows: Spousal support that I pay by court order from a different marriage ___ordered before 1/1/19 ___order changed after 12/31/18 and did state a different tax impact to the parties. However, if the JCC prefers to include clarifying instructions that relate to the federal taxation issue, our Committee would recommend the revision that follows: *Check the box if the court made the initial spousal support order before January 1, 2019, of if a court-ordered change to that spousal support order was made after December 31, 2018, and does not state any different tax impact to the parties.	The committee appreciates the commenter's suggestions relating to item 5.e. and item 5.*l.* After discussion, the committee prefers to implement a more concise change to these areas of the form by adding a single check box that states "___federally taxable*" and "federally deductible*," respectively. Then, at the bottom of the same page, including the following instruction: "*Check the box if the spousal support order or judgment was executed before January 1, 2019, or if a court-ordered change maintains the spousal support payments as taxable income to the recipient and tax deductible to the payor." The committee is concerned that a party may not readily understand the meaning of "tax impact to the parties," as the commenter suggests, whereas, a party may well know whether he or she has paid federal income tax on spousal support payments received or has been able to deduct spousal support payments made during a given tax year that were based on a court order or judgment. In addition, the committee believes that its recommended changes more concisely call the issue to the attention of the judicial officer making an order or issuing a judgment for support, attorney's fees, or other financial matter that is at issue in the hearing or trial.
5.	Gursey Schneider LLP	A	No specific comment.	No response required.

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Family Law: Income and Expense Declaration (technical revisions to form FL-150)
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	Commentator	Position	Comment	Committee Response
	by Alexandra Peais, CPA San Francisco		The commenter submitted suggestions for future changes to this form. See attached comment chart for proposed future revisions.	The committee appreciates the suggestions for future changes to the form.
6.	Harriett Buhai Center for Family Law by Rebecca L. Fischer	A	The proposal appropriately addresses the stated process. The commenter also submitted suggestions for future changes to this form. See attached comment chart for proposed future revisions.	No response required. The committee appreciates the suggestions for future changes to the form.
7.	Orange County Bar Association by Nikki P. Miliband	A	The form proposal does address the issue of the taxability of spousal support already being paid. No other changes to the form at this time since the impact of the new tax laws is still being developed and addressed. No other suggestions for changes at this time.	No response required. No response required. No response required.
8.	Superior Court of Orange County Juvenile and Family Division by Cynthia Beltran, Analyst	N/I	Does the proposal provide cost savings? No. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. The rule mentions that if parties modify their spousal support judgments after January 1, 2019, they may choose to follow the new federal law and make the support payments non-deductible to the payor and taxable to the recipient. If parties do not come to an	No response required. No response required. The Invitation to Comment references Public Law No: 115-97, which provides the following: EFFECTIVE DATE.—The amendments made by this section shall apply to—

	Commentator	Position	Comment	Committee Response
			agreement, will the court be expected to make an order? Please provide clarification.	(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. If the parties do not come to an agreement (and do not expressly provide that the new tax code amendments apply to the modification), then the modified order will not follow the new federal law. The court is still authorized to modify the spousal support order.
9.	Superior Court of Riverside County	A	Q: Does the proposal appropriately address the stated purpose? Yes Q: Are there other ways to change the form to comply with the new tax laws? [no response to this question] Q: Would the proposal provide cost savings? No. Q: What would the implementation requirements be for courts? Train staff, revise procedures, create new codes for case management.	No response required. No response required. No response required. No response required.

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Family Law: Income and Expense Declaration (technical revisions to form FL-150)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes? Equally well.	No response required.
10.	Superior Court of San Diego County by Michael Roddy Executive Officer	A	Q: Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal, if any.	No response required.
			Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of various sizes.	No response required.
			The commenter also submitted suggestions for future changes to this form. See attached comment chart for proposed future revisions.	The committee appreciates the suggestions for future changes to the form.

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Family Law: Income and Expense Declaration (proposed future revisions to form FL-150)

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

The proposed substantive changes to this form that are received from the public will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

	Commentator	Comment
1.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel Rancho Cordova	The Department concurs that more substantial changes to the FL-150 would be appropriate in future cycles. The Department has concerns, based on its discussions with staff from LCSAs, that the FL-150, as exists today, is difficult for unrepresented litigants to complete. The Department appreciates the JCC's ongoing commitment to resolving Elkins issues that make it more difficult for unrepresented litigants to fully access the courts. Because the Department has had a very expedited timeframe for gathering additional input from stakeholders before this comment was prepared, it respectfully requests an opportunity to partner with JCC staff and its own stakeholders (judicial, LCSAs, family law bar, and advocates) to help the JCC identify what changes might better help it meet these Policy objectives prospectively. The Department respectfully requests an opportunity to engage in these discussions before the FL-150 is sent out for public comment. As to the input available to date, there presently is no consensus as to the best approach, but at least three options have been identified by the Child Support Directors Association's Forms Committee. • One suggestion was to create a new simplified "Declaration Regarding Child Support Factors" that could be attached by the parties to a Request for Order or function as a standalone document. • The second suggestion was to simplify the language on-the existing FL-150 overall so it would be easier for unrepresented litigants to complete. • The third suggestion was to revise the FL-150 so it collects only core information applicable to all case types. Separate schedules for the most typical scenarios (i.e. self-employment, ownership of real property, and other assets) would have to be developed for use and case participants would then certify on the FL-150 which schedules apply to their situation and have been attached for the court's consideration. • In terms of the timeshare question, there appeared to be consensus among the group that the actual percentage of visitation time exercised by case participants is not something that the

SPR18-21

Family Law: Income and Expense Declaration (proposed future revisions to form FL-150)

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

The proposed substantive changes to this form that are received from the public will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

	Commentator	Comment
		FL-150 form, as it exists today, captures reliably. As such, JCC may want to consider moving away from percentages and instead rely on plain language descriptions of the number of days, weeks, etc. that the parents actually spend with each child. • Finally, the Department would encourage JCC to consider either adopting a rule of court or issuing instructions to the trial courts that support the ability of DCSS' e-filing LCSAs to forward FL-150s to the court through other electronic means outside their direct interface with the Child Support Enforcement (CSE).
2.	Child Support Directors Association of California (CSDA) by Ronald Ladage, Chair CSDA Judicial Council Forms Committee and Assistant Director/Chief Attorney, El Dorado County DCSS	The Committee concurs that more substantial changes to the FL-150 would be appropriate in future cycles. The Committee has concerns, based on its discussions with staff from LCSAs, that the FL-150, as exists today, is difficult for unrepresented litigants to complete. The Committee appreciates the JCC's ongoing commitment to resolving Elkins issues that make it more difficult for unrepresented litigants to fully access the courts. The Committee would like the opportunity to substantially revise the FL-150. The Committee has identified at least three options. • The first, is to create a new simplified "Declaration Regarding Child Support Factors" that could be attached by the parties to a Request for Order or function as a standalone document. • The second, is to simplify the language on the existing FL 150 overall so it would be easier for unrepresented litigants to complete. • The third, is to revise the FL-150 so it collects only core information applicable to all case types. Separate income schedules for the most typical scenarios would have to be developed for use and case participants would then certify on the FL-150 which schedules apply to their situation (i.e. self-employment, ownership of real property, and other assets) and would be attached for the court's consideration. • Finally, the Committee would encourage JCC to consider either adopting a rule of court or issuing instructions to the trial courts that support the ability of LCSAs to file FL-150s

SPR18-21

Family Law: Income and Expense Declaration (proposed future revisions to form FL-150)

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

The proposed substantive changes to this form that are received from the public will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

	Commentator	Comment
		electronically outside their direct interface with the Child Support Enforcement (CSE).
3.	Hon. Enrique Camarena, Judge, Superior Court of San Diego County	Section 13 should also be amended to require a party to list their actual expenses, estimated expenses and proposed needs. Frankly, it is seldom useful for parties to provide only proposed needs. A party should be required to complete three different sections (actual, estimated, proposed) to provide the judicial officer with increased data on which to set support.
4.	Gursey Schneider LLP by Alexandra Peais, CPA San Francisco	It would be helpful and encourage transparency in there were a box that a party could check on the Income and Expense Declaration that would indicate the party is a beneficiary of a trust. I envision that would be included in item 11 on page 2, and could be listed as it's own line item as 11d. The line item could read as follows: d. Trust assets that I am the beneficiary of The amount listed would be the total value of the trust corpus (if known). In addition to the proposed changes to the Income and Expense Declaration regarding the taxable/deductible nature of spousal support received and paid, I think there needs to be further disclosure regarding equity compensation (stock options, restricted stock units, etc.). As there is not a specific line item related to this type of income (which is sometimes very substantial and may represent the majority of a party's recurring annual income), many times parties leave this information off the I&E form completely. I would envision that there be a separate line item for equity compensation, which would appear after the 5c. for "Commissions or bonuses". The new line item would read as follows: d. Equity compensation (stock options, RSUs, etc.) (specify)

SPR18-21

Family Law: Income and Expense Declaration (proposed future revisions to form FL-150)

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

The proposed substantive changes to this form that are received from the public will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

	Commentator	Comment
		I also envision there would be boxes to check regarding the vesting schedules for such equity compensation. Suggestions for the boxes are as follows: Monthly Quarterly Annually Other
5.	Harriett Buhai Center for Family Law by Rebecca L. Fischer	For many pro per litigants, the FL-150 is one of the most confusing forms used during a family law case. Given that the majority of family law cases involve a pro per litigant on one or both sides of a case, ensuring that pro per litigants have sufficient information on how to properly complete the form is essential. An FL-I 50-INFO form that identified when and how the form should be used would be very valuable to pro per litigants. Some proposed changes to form FL-150 itself: • Remove "Public Assistance" from the "Income" section in 5 and add as a separate section. • "12. The following people live with me": Change to "the following people are part of my household." Many pro per litigants share a living space with other people. However, for many litigants, the people sharing their physical house are not people who are part of their economic household. Changing the phrasing of the form would improve the accuracy of the information providing to opposing parties and to the court. • 12: add place to indicate how much persons in 12 are paying of the household expenses (not just are they paying some of the expenses) • 13 "s": change to "Amount of expenses paid by non-household members" • 13: add a line "t" for a litigant to indicate expenses are paid for in part or in whole by CalFresh. • 16: add "c" box for litigants to mark whether the parenting schedule is ordered by the court • 17: add box to indicate children currently receiving Medi-Cal
6.	Superior Court of San Diego County	• FL-150, page 2, item 10.c. medical, dental, etc. - Add the following: 0 Employer Paid

SPR18-21

Family Law: Income and Expense Declaration (proposed future revisions to form FL-150)

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

The proposed substantive changes to this form that are received from the public will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

	Commentator	Comment
	by Michael J. Roddy Executive	• FL-150, page 3, item 14 installment payments and debts - Add the following: 0 Additional installment payments and debts continued on attachment. • FL-150, page 3, item 15 – our court suggests adding a section on other fees, i.e., fees for experts or evaluators. Litigants may have fees paid or owed for an evaluation such as a custody evaluation or a substance abuse evaluation whether or not they are represented.
7.	TDC Family Law Tracy Duell-Cazes, CFLS San Jose	Since the I&E is being revised to cover changes to the tax laws, it might also be a good idea to add a check box to Item 10c (Deductions – health insurance related) to indicate whether it is pre-tax. This will help the parties and the Court ensure that the health insurance premiums are properly entered in the support calculator(s) for purposes of support. When health-related insurance premiums are paid "pre-tax" it usually has a significant effect on the amount of support that is ordered. This also affects the pro-ration of child support "add-ons" under Family Code It also affects the determination of a party's actual financial position for purposes of the analysis for the award of need-based fees and to a lesser extent the determination of the hardship for the award of sanctions.

Shown Here: **ATTACHMENT B**

Public Law No: 115-97 (12/22/2017)

(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.

Item number:20

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

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..

If requesting July 1 or out of cycle, explain:

N/A

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Family Law: Transfer of Jurisdiction

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.97

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 6, 2018

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends the adoption of a new rule of court to implement family law–specific transfer of jurisdiction procedures to comply with 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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, adopt California Rules of Court, rule 5.97, to establish procedures to implement the family law–specific provisions of Code of Civil Procedure section 399 as required by recently enacted legislation.

The text of the new rule is attached at pages 5–6.

Relevant Previous Council Action

The council has never taken action relevant to this recommendation.

Analysis/Rationale

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.

Policy implications

The Legislature enacted AB 712 to address concerns that cases subject to transfer of jurisdiction orders in family law were languishing with the result that there was no court with clear jurisdiction over the matter. To ensure that the rule would best address the underlying concerns, the committee sought to clarify some of the key procedural hurdles and establish realistic time frames that would not delay cases unnecessarily. Because a failure to pay the required transfer fees seemed to be a key obstacle to completing transfers, the rule of court is clear as to who is required to pay the fees, and that a fee waiver granted in the transferring court is valid in the receiving court for purposes of filing the case. In addition, in response to comments received from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the committee added a provision requiring the court to make a clear fee order when ordering the transfer, including any determination of a fee waiver. These provisions are intended to ensure that the parties understand what is required to complete the transfer, and can comply in a timely manner to prevent delays.

Comments

This proposal was circulated for public comment from April 9 to June 8, 2018, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Four commenters agreed with the proposal. Five organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee andCourt Executives Advisory Committee, agreed if the proposal was modified. One commenter did not express a position, but submitted comments on the fiscal impacts. A chart with the full text of the comments received and the committee's responses is attached at pages 7–20.

Clarifying emergency order process and jurisdiction

Commenters noted that both the sending and receiving courts need to know about the actions of the other to clarify which has jurisdiction and under what circumstance. To address this issue the committee modified the rule to ensure that the receiving court send notice to the sending court that the transferred case has been filed and that the sending court send notice to the receiving court when a request for an emergency order is filed, and when action is taken on that request. With these revisions the committee believes that each court will be aware of its jurisdictional authority over the cause of action.

Timing of transfer of case file

The committee sought specific comment on the question of whether the suggested time frames in the proposed rule were workable for the courts. The rule that circulated for comment provided the court transferring the case with five court days after the expiration of the 20-day writ period to transfer the case file, and the receiving court with 20 court days from the transmittal date to file the case and send notice. Four commenters agreed with these timeframes, while two suggested modifications. One suggested lengthening the time frames for sending and receiving courts, while the other suggested that sending and receiving courts both be provided with 20 court days. Because the rule is based on court days rather than calendar days—and includes the writ period in the time before the case file is sent—the committee determined that these modifications were not needed and would unnecessarily delay transfers in a manner inconsistent with the Legislature's intent in enacting AB 712.

Defining proceedings that are subject to the limitation on action pending a transfer

Two commenters raised concerns about whether the rule would limit the court's ability to take action in a Domestic Violence Prevention Act (DVPA) matter. On commenter appeared to assume that these actions would fall under the court's emergency authority under Code of Civil Procedure section 399, and thus raised concerns that the standard for the court granting the transfer to take action during the pendency of the transfer was in conflict with the standard for granting a temporary restraining order under the DVPA, and proposed adding language to the rule excepting those actions. This proposed exception appears to be at odds with the plain language of the statute which expressly defines when a court can take action while a transfer is pending, and thus the committee opted not to add it to the rule. The committee also noted that a petition for relief under the DVPA would likely not be considered part of the cause of action subject to the transfer. This specific issue was raised by another commenter who questioned what the limits of the restriction might be. The language in the rule proposed by the committee tracks the statute that it implements, and the limits on filing apply only to the cause of action subject to the transfer and not to other causes of action that the parties might file.

Require transferring court to address fee issues/waiver before transfer

The Joint Rules Subcommittee of the TCPJEAC and CEAC requested that a paragraph be added to the rule requiring the court to take action on any fee issues and to ensure that any request for a fee waiver is ruled on before the transfer takes place. The committee agreed that fee issues are often the impediment to timely completion of a transfer of jurisdiction and thus modified the rule to include this exception.

Alternatives considered

The advisory committee considered alternative time frames based upon the comments but determined that the proposal struck the appropriate balance between accomplishing transfers in a timely manner and providing a reasonable time frame to accommodate the range of circumstances facing different courts. In addition, the committee considered expressly stating that the rule did not apply to separate DVPA actions including the same parties but determined that such a provision was outside the committee's authority under section 399.

Fiscal 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. Commenters identified a range of possible impacts on the court to implement the rule. However, other than extending the timeframes as discussed above, they did not suggest modifications to the rule to mitigate these impacts. The operational impacts cited in the comments include: training of staff, maintenance of files during the transfer to allow for emergency orders, possible changes to case management systems, and updating internal procedures and policies.

Attachments and Links

1. Cal. Rules of Court, rule 5.97, at pages 5–6
2. Chart of comments, at pages 7–20
3. Link A: Assembly Bill 712 (Stats. 2017, ch. 316), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB712*

Rule 5.97 of the California Rules of Court is adopted, effective January 1, 2019, to read:

Rule 5.97. Time frames for transferring jurisdiction

(a) Application

This rule applies to family law actions or family law proceedings for which a transfer of jurisdiction has been ordered under Part 2 of title 4 of the Code of Civil Procedure.

(b) Payment of fees; fee waivers

Responsibility for the payment of court costs and fees for the transfer of jurisdiction as provided in Government Code section 70618 is subject to the following provisions:

(1) If a transfer of jurisdiction is ordered in response to a motion made under title 4 of the Code of Civil Procedure by a party, the responsibility for costs and fees is subject to Code of Civil Procedure section 399(a). If the fees are not paid within the time specified in section 399(a), the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause of action. Except as provided in subdivision (e), no other action on the cause may be commenced in another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(2) If a transfer of jurisdiction is ordered by the court on its own motion, the court must specify in its order which party is responsible for the Government Code section 70618 fees. If that party has not paid the fees within five days of service of notice of the transfer order, any other party interested in the action or proceeding may pay the costs and fees and the clerk must transmit the case file. If the fees are not paid within the time period set forth in Code of Civil Procedure section 399, the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause or enter such other orders as the court deems appropriate. Except as provided in subdivision (e), no other action on the cause may be commenced in the original court or another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(3) If the party responsible for the fees has been granted a fee waiver by the sending court, the case file must be transmitted as if the fees and costs were paid and the fee waiver order must be transmitted with the case file in lieu of the fees and costs. If a partial fee waiver has been granted, the party responsible for the fees and costs must pay the required portion of the fees and costs before the case will be transmitted. In any case involving a fee waiver, the court receiving the case file has the authority under Government

Code section 68636 to review the party's eligibility for a fee waiver based on additional information available to the court or pursuant to a hearing at final disposition of the case.

(4) At the hearing to transfer jurisdiction, the court must address any issues regarding fees. If a litigant indicates they cannot afford to pay the fees, a fee waiver request form should be provided by the clerk and the court should promptly rule on that request.

(c) Time frame for transfer of jurisdiction

After a court orders the transfer of jurisdiction over the action or proceeding, the clerk must transmit the case file to the clerk of the court to which the action or proceeding is transferred within five court days of the date of expiration of the 20-day time period to petition for a writ of mandate. If a writ is filed, the clerk must transmit the case file within five court days of the notice that the order is final. The clerk must send notice stating the date of the transmittal to all parties who have appeared in the action or proceeding and the court receiving the transfer.

(d) Time frame to assume jurisdiction over transferred matter

Within 20 court days of the date of the transmittal, the clerk of the court receiving the transferred action or proceeding must send notice to all parties who have appeared in the action or proceeding and the court that ordered the transfer stating the date of the filing of the case and the number assigned to the case in the court.

(e) Emergency orders while transfer is pending

Until the clerk of the receiving court sends notice of the date of filing, the transferring court retains jurisdiction over the matter to make orders designed to prevent immediate danger or irreparable harm to a party or the children involved in the matter, or immediate loss or damage to property subject to disposition in the matter. When an emergency order is requested, the transferring court must send notice to the receiving court that it is exercising its jurisdiction and must inform the receiving court of the action taken on the request. If the court makes a new order in the case, it must send a copy of the order to the receiving court if the case file has already been transmitted. The transferring court retains jurisdiction over the request until it takes action on it.

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
1.	FLEXCOM Stephen J. Hamilton, Legislation Chair	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes.	No response required.
2.	Family Violence Appellate Project Shuray Ghorishi, Senior Staff Attorney	AM	1. Does the proposal appropriately address the stated purpose? Yes, the proposed rule provides reasonable time frames and a workable solution to avoid delays in transferring cases of low-income litigants by allowing them to apply for a fee waiver. However, as currently drafted, subsection (e), which affords the original court with special jurisdiction to make orders to prevent immediate harm before the case is transferred, may exclude some survivors of domestic abuse that file restraining order requests under the Domestic Violence Prevention Act, Family Code section 6200 et seq. ("DVPA"). Under statutory authority, a petitioner does not need to demonstrate "immediate harm" to obtain a temporary restraining order; rather, the DVPA prescribes that the petitioner demonstrate only "a past act or acts of abuse." (See Fam. Code, § 6300.) Thus, the language included under subsection (e), in particular "immediate danger or irreparable harm," imposes a stricter standard than the standard mandated by the DVPA. Moreover, even if the presently-drafted language could be interpreted to include these temporary restraining orders, we still encourage the Judicial Council to expressly state so in the rule to avoid any ambiguity that a petitioner may obtain such protective order. Accordingly,	The standard for making orders in a family law proceeding in a case which is being transferred that is proposed in rule 5.97 is drawn directly from the statute that it implements, and that statute makes no exception for DVPA orders. The committee notes, however, that a petition for a protective order under the DVPA may well be a separate proceeding than other family law causes of action, and could thus may be able to be filed in any jurisdiction with venue over the DVPA action without regard to rule 5.97. Given these facts, the committee has opted to maintain the statutory standard without an exception.

	Commenter	Position	Comment	Committee Response
			we suggest the following modification to subsection (e): • Until the clerk of the receiving court sends notice of the date of filing, the transferring court retains jurisdiction over the matter to make orders designed to prevent immediate danger or irreparable harm to a party or the children involved in the matter, or immediate loss or damage to property subject to disposition in the matter, or domestic violence restraining orders under section 6200 et seq. of the Family Code.	
3.	Joint Rules Subcommittee, TCPJAC/CEAC	AM	Recommended JRS Position: Agree with proposed changes if modified. The JRS notes the following impact to court operations: • This proposal requires some training to ensure clerks are aware of the new time frames, but this training is minimal. The JRS expects no major impact on workload as a result of this rule change. Suggested Modifications: The JRS recommends the addition of the following paragraph: • (4): "At the hearing to transfer Jurisdiction, the Court is to address any issues regarding fees. If a litigant indicates they cannot afford to pay the fees, a fee waiver request form should be provided by the clerk and the court should promptly rule on that request."	No response required. The committee has added this paragraph to the rule to ensure that fee issues are addressed in a timely manner.
4.	Hon. William Liebman, Judge, Superior Court of Ventura County	AM	Receiving court should be required to notify transferring court of acceptance. Transferring court has jurisdiction to make orders until acceptance. If transferring court is not given	The committee agrees that this notice is appropriate and has added it to rule 5.97(d).

	Commenter	Position	Comment	Committee Response
			notice, there is a possibility of an order being entered by transferring court after receiving court has taken jurisdiction.	
5.	Courtney O'Hagan, Family Law Facilitator, Superior Court of Contra Costa		General Comments on the Proposed Cal. R. of Court. 5.97 CRC 5.97(e) provides much needed relief for litigants who find themselves in an emergency situation while their transfer is pending. There is no statewide uniform procedure for litigants to seek, and courts to decide, ex parte relief. Given the timeframe to transfer cases described in CRC 5.97(c), in many instances the receiving court may send notice of filing the case prior to a scheduled hearing following a temporary emergency order. To avoid confusion in how each county handles emergency orders pending a case transfer, clarification is needed as described below: • How the courts should communicate with each other that an emergency order was requested/made while a transfer is pending; • How sending courts should handle hearings when a temporary emergency order is issued by the sending court but the receiving court sends notice of filing the case prior to the scheduled hearing on the emergency order. Does the sending court maintain jurisdiction on the emergency issue through the conclusion of the hearing? • How sending courts should handle hearings when a judicial officer in the sending court does not issue an emergency order but does find good cause to grant an order	The committee appreciates this question and the following issues and has clarified the rule to require the court considering the emergency request to notify the other court when the request is made, and after the court takes action and to provide for jurisdiction to remain with the transferring court until it takes action on the request. The statute provides that the transferring court only retains jurisdiction to grant emergency orders, thus any request for an order shortening time would need to be filed in the receiving court.

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			shortening time to schedule a hearing. Once the receiving court sends notice of filing the case, does any pending hearing on an order shortening time (but without an emergency order) need to be rescheduled in the receiving court? If so, who is responsible to coordinate rescheduling the hearing?	
			• In the event an emergency request is made and denied, a hearing would still ordinarily be scheduled on the court's regular calendar with no interim relief ordered. In this specific scenario, should the sending court deny the emergency request, decline to set a hearing on the request, taking no further action, and instead direct the parties to file in the receiving court once notice has been sent the receiving court has filed the case?	The committee agrees that if the transferring court denies the request for emergency relief that it does not have jurisdiction to then set a hearing on the regular calendar, and thus should direct the party to file in the receiving court.
			• Who is responsible for maintaining copies of current orders that will be needed if the sending court is asked to exercise emergency jurisdiction? Will the sending court be required to maintain a copy of all orders? Will the rule require the parties to be responsible for obtaining and maintaining a copy of any order they believe may be needed for potential emergency relief while the transfer is pending, relieving the courts of that burden?	The committee has revised the rule to require the court to send a copy of the emergency order to the receiving court if the case file has already been transmitted. Placing that burden on the parties may not result in complete and accurate information being added to the case file and thus the committee proposes court to court communication for this purpose.
			Request for Specific Comment (General): Does the proposal appropriately address the stated purpose? Yes; however, as currently drafted may cause additional cost to the courts	The committee has worked to address the issues raised by the commenter and clarify the rule.

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

	Commenter	Position	Comment	Committee Response
			and create confusion when emergency jurisdiction is exercised. Are the timeframes proposed in the rule appropriate? The timeframes proposed provide both sending and receiving courts very little breathing room and may cause courts to either incur overtime costs or miss the deadlines, particularly if that court has multiple transfers at one time, large file(s) to send or receive, or staff out sick or on vacation. Extending the timeframe to send out a transferred case by 5 court days, for a total of 10 court days, and extending the timeframe to file a received a case by 10 court days, for a total of 30 court days, will allow courts more flexibility to meet the deadlines while still providing litigants a reasonable and specific timeframe for their case transfer to be completed. Is the treatment of fee waivers in the rule a workable solution? Yes, if the rule is interpreted and implemented uniformly across all counties. Clarification is needed when the litigant has a valid fee waiver at the time the sending court transmits the file but it expires before the receiving court enters the file. Request for Specific Comment Sought from Courts: Would the proposal provide cost savings? If so please quantify. No; the proposal will potentially create additional cost in the form of additional staff or overtime required to ensure compliance with	The committee considered this feedback but agreed with the majority of commenters who felt the proposed timelines in the rule were workable, and that any extensions would cause unnecessary delays in accomplishing the transfer. The committee also notes that the five court days to send the file is after the expiration of the twenty day writ period, and the twenty court day period on the other end amounts to 4 weeks total which seemed reasonable to the committee. The committee has sought to clarify the treatment of fees and fee waivers in the rule by requiring the court to address the issue when making a transfer order. The committee notes that all of these impacts detailed by the commenter are a result of the underlying statutory change rather than the rule of court implementing the change, and are thus

	Commenter	Position	Comment	Committee Response
			timing requirements (5.97(c)), track compliance with fee payments (5.97(b)), ensure the sending court retains sufficient records to exercise emergency jurisdiction in the event it becomes necessary (5.97(e)), and to coordinate between the sending and receiving courts when emergency jurisdiction is exercised by the sending court pending the receiving courts' filing of the case (5.97(e)). The amount of additional cost will fluctuate depending on the following factors: • Size of the file received from another court and therefore the amount of time required to file all documents in the new court; • Large files generally require a legal processing clerk to be available all day to ensure documents are all filed within the same calendar day. In order to meet timing requirements, this may result in a legal processing clerk being unavailable to have a filing window open for the public, causing longer lines and delays and potentially necessitating overtime or additional staff. • Size of the file to be sent to another court, including whether court staff must go through each file to find and photocopy court orders; • Pending implementation of a case management system that supports electronic documents and for cases with orders filed prior to implementation of such a case management system will require clerical hours to review files and photocopy orders to maintain with the	unavoidable, but will take note of them in the report to the council.

	Commenter	Position	Comment	Committee Response
			sending court in case emergency jurisdiction is required, if that obligation ultimately falls on the court. ☐ Alternatively, the rule could require the parties to be responsible for obtaining and maintaining a copy of any order they believe may become an issue requiring emergency jurisdiction during the interim period and relieve the courts of that burden. • the number of cases in which emergency jurisdiction is exercised while a transfer is pending and how uniformly courts procedurally approach exercising emergency jurisdiction 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. • Revising processes and procedures o Procedure will need to be developed to handle requests for emergency orders pending a file transfer, including processing the request & calendaring any hearings, communication between the sending and receiving courts, and to send/receive documents related to the request for emergency order after the receiving court has filed the case and the emergency matter is concluded; o Procedure may need to be developed to retain copies of files or orders to enable the	

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			court to make emergency orders pending the transfer • Training: o Staff will need to be trained on new procedures to handle requests for emergency orders while a case transfer pending. • Modifying case management systems o In the long run, the case management system will need to be updated to allow electronic documents. What would the implementation requirements be for courts? Unclear at this time. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A minimum of 6 months is requested. How well would this proposal work in courts of different sizes? Unclear at this time; there are too many unknown variables to properly assess.	No response required. No response required
6.	Orange County Bar Association Nikki P. Milliband, President	A	The proposal does address the stated purpose; establishing time limits to when an action gets transferred. Since the time frames come from CCP 399 they are appropriate. The treatment of fee waivers is a workable solution.	No response required. No response required. No response required.
7.	Superior Court of Los Angeles County	AM	Suggested Modifications:	The committee considered this feedback but agreed with the majority of commenters who felt

	Commenter	Position	Comment	Committee Response
			We disagree with setting a five court day requirement for transmission of the file to the receiving court, and instead it should be 20 days. This would be more in line with the 20 days to send out a notice that the receiving court has, as provided by the proposed rule. Further, there should be some discussion about the mechanics of the transfer between courts for e-courts and paper courts. Rule 5.97 (a) Page 3, line 4 – The "or" allows two interpretations of the sentence. Add "family law" before "proceedings" to read: "This rule applies to family law actions or family law proceedings for which a transfer of …" Page 3, line 5 – Add "Part 2" to the reference to read: "…jurisdiction has been ordered under part 2, title 4 of the Code of Civil Procedure"	the proposed timelines in the rule were workable, and that any extensions would cause unnecessary delays in accomplishing the transfer. The committee also notes that the five court days to send the file is after the expiration of the twenty day writ period which seemed reasonable to the committee. Given that each court is differently situated with regard to paper v. electronic records the committee believes it is premature to set forth any hard and fast rules on this topic at this time so that courts can individually determine how to best transmit case files. The committee has incorporated this suggested change for clarity. The committee has incorporated this suggested change for clarity.
8.	Superior Court of Orange County Juvenile and Family Court Divisions	NI	What would the implementation requirements be for courts? In order to implement, changes may be needed to our case management system. Also, revisions to procedures and staff training would be required.	No response required.

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required.
9.	Superior Court of Riverside County Susan D. Ryan, Chief Deputy of Legal Services	A	• Does the proposal appropriately address the stated purpose? Yes • Are the time frames proposed in the rule appropriate? Yes • Is the treatment of fee waivers in the rule a workable solution? Yes • Would the proposal provide cost savings? No. • What would the implementation requirements be for courts? Train staff, revise procedures, create new codes for case management. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? Equally well.	No response required. No response required. No response required. No response required. The committee will note this impact in its report to the council. No response required. No response required.
10.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes.	No response required.

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

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			Q: Are the time frames proposed in the rule appropriate? Yes.	No response required.
			Q: Is the treatment of fee waivers in the rule a workable solution? Yes.	No response required.
			Q: Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Updating internal procedures and notifying staff.	These impacts will be noted in the report to the council.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of various sizes.	No response required.
			Additional Comments: Proposed Rule of Court, 5.97(b)(2): What is meant by the last sentence: "No other action on the cause may be commenced in the original court or another court before satisfaction of the court's order for fees and costs or a court-	The committee has tracked the language in the statute and believes that the limitation to "the cause" may not include other types of petitions, such as a DVPA petition.

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

	Commenter	Position	Comment	Committee Response
			ordered waiver of such fees and costs." – Does this mean that a party could not appear in the original court where the action is to be transferred from to file anything (e.g. domestic violence restraining orders or temporary emergency (ex parte) orders regarding minor children) until the fees have been paid?	
11.	Superior Court of Ventura County Julie Camacho, Court Manager	AM	Clarification of proposed rule 5.97: 5.97(b)(1) and (2) each contain the following: If the fees are not paid…the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause. Does this mean the court can vacate the order of transfer, but not the case? Clarification is needed as the nonpayment of fees is the reason a large number of family law cases have not been transferred pursuant to the transfer order. If payment is not made, the file sits on the court's records shelf with an active transfer order until the party decides to make payment. 5.97(b)(2) includes the following sentence: No other action on the cause may be commenced in the original court or another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs. Can [sic] of this sentence is requested. How does a court prohibit this from occurring? And, Isn't this contrary to Code of Civil Procedure 399(d)?	The language in the rule is drawn from CCP section 399 and it is clear that the case may be dismissed. The rule maintains that discretion, so that if payment is not made, upon a motion the case may be dismissed. This provision has been clarified to allow for emergency orders as authorized in subdivision (e) of the rule.

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			5.97(c) states "After a court orders the transfer of jurisdiction over the action or proceeding… Another factor that causes a delay in the transfer of a case is the preparation of an Order after Hearing. When a party, or a party's attorney is directed to prepare and file a formal order, the clerk must wait for the order to be filed before the case is transferred. The party preparing the Order after Hearing must comply with CRC 5.125 which provides the time deadlines for preparing, serving and filing the OAH. Many times the filer does not comply with the deadline in CRC 5.125. An example of this is a case where the court granted a transfer request at a hearing on 10/31/17 and directed respondent's counsel for prepare a formal order. The Findings an Order after Hearing in this case was filed on 02/09/18, more than 3 months later. This court recommends that the rule require the court to mail a copy of the court's minute order to all parties in the case in place of preparation of an order after hearing. In addition, it would be helpful if the rule clearly stated that the court's minute order is the formal order of the court and the parties are exempted from the requirements of CRC 5.125. This court has transferred cases without an Order after Hearing being filed and the case was returned by the receiving court with a letter indicating the case is being returned due to no formal order having been provided to the receiving court.	The committee believes that there are mechanisms in existing law to ensure that orders after hearing are completed in a timely manner and is concerned with the precedent of making exceptions to general rules. In addition, the committee notes that not all courts create minute orders and thus the proposed solution would not work across courts.

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

Spring 18-22

Family Law: Transfer of Jurisdiction (Adopt Cal. Rules of Court, rule 5.97)

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

	Commenter	Position	Comment	Committee Response
			Both 5.97(c) and (d) should include that mailing of the notice must also be sent to the court. The current practice is the sending court includes the receiving court in the notice of transfer and also mails a "receipt of transfer" that is then completed by the receiving court and include the date of receipt of transfer and the new case number. This receipt is then returned to the sending court. Although this is the current practice, it is not included in any rule or statute and should be included here.	The committee has revised the rule as suggested here to require that notice be sent to the receiving court at the time of transmittal and the transferring court from the receiving court stating the transfer filing date.

Item number: 21

RUPRO ACTION REQUEST FORM

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

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

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. Sentate 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

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Juvenile Law: Decriminalization of Penal Code section 647f

Rules, Forms, Standards, or Statutes Affected
Approve forms JV-742 and JV-743

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 1, 2018

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes approving two new forms to comply with Senate Bill 239, which requires the Judicial Council to promulgate forms to implement the legislation that repeals Penal Code section 647f and vacates convictions that were based on that code section. The proposed forms would allow those who are eligible for relief to request that their Penal Code 647f convictions be vacated and dismissed and that they be resentenced, if appropriate.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, approve:

1. Form JV-742, *Request to Vacate Disposition and Dismiss Penal Code Section 647f Adjudication*, which is a request for relief and includes sections:

    - To request resentencing and dismissal for young people who may be on probation for multiple offenses, only one of which is a section 647f violation;

- To request dismissal for young people who are no longer on probation for the section 647f violation;
- Where the applicant can waive his or her appearance;
- Where the applicant can ask for an interpreter; and
- Where the applicant can waive the right to the original sentencing judge; and

2. Form JV-743, *Order After Request to Vacate Disposition and Dismiss Penal Code Section 647f Adjudication,* which allows the court to either terminate delinquency jurisdiction or state which terms of probation will be vacated.

The text of the two forms is attached at pages 4–6.

Relevant Previous Council Action

The council has taken no previous action on this topic because these forms are newly created to implement recent legislation.

Analysis/Rationale

Penal Code 647f made it a felony to engage in prostitution subsequent to an arrest that revealed the person was positive for HIV/AIDS. SB 239 (Wiener; Stats. 2017, ch. 537), implemented through Penal Code sections1170.21 and 1170.22, allows people convicted of violating Penal Code 647f to seek to have their convictions vacated and dismissed as invalid. Those serving a sentence for a Penal Code 647f offense may not only request dismissal of the conviction but also seek to be resentenced. Section 1170.22(h) makes this relief applicable to juvenile delinquency adjudications and dispositions, and section 1170.22(i) specifically directs the Judicial Council to create forms to implement the relief.

The Criminal Law Advisory Committee is drafting forms for use in criminal proceedings; however, the differences between adult and juvenile court are significant enough that creating a joint form would be challenging.[1] Consequently, the committee proposes approving these two forms to implement the legislation.

Policy Implications

The recommended adoption of these two new forms reflect an overarching policy shift in how the juvenile justice and child welfare systems treat victims of commercial sexual exploitation. There has been recognition, at both the legislative and judicial level, that young people caught up in commercial sexual exploitation are victims, not delinquents, and should be afforded trauma informed services and care. This policy shift is occurring at both the legislative and judicial level.

[1] The Criminal Law Advisory Committee proposal, *Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f,* is available at [insert hyperlink].

Comments

This proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle from April 6 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

The committee received five comments on this proposal. All five of the commenters agreed with the proposal if it was modified. Most of the commenters suggested minor or technical changes, which the committee accepted without debate. Three issues generated discussion. The first was a recommendation made by four of the five commenters that the 5-year sunset period be lengthened to 10 years. Penal Code 647f is a charge not often seen in juvenile cases; however, lengthening the sunset period to 10 years will enable those few people who may have suffered a true finding for this offense to take advantage of the relief.

Another comment that generated discussion questioned whether forms JV-742 and JV-743 should apply to those people who are no longer on probation for a Penal Code section 647f offense, given that section 1170.21 makes dismissal and vacatur automatic in that circumstance. After discussion, the committee decided that the forms should include those who are entitled to automatic relief to ensure the vacatur and dismissal process is triggered at the trial court level.

Finally, one commenter recommended that form JV-743 include an option for the court to find that the applicant was ineligible for the relief requested and deny the request. The committee discussed this point and agreed that form JV-743 should be revised to include such a check box.

Alternatives considered

The committee considered whether creating forms to implement SB 239 was necessary, given that Penal Code section 647f is not seen in juvenile cases. Despite the rarity of this charge in juvenile cases, the committee determined that creating these forms was necessary to carry out the legislative directive to do so and to ensure that a process exists to request vacatur and dismissal for those rare juvenile cases that include this offense. The committee also considered developing joint forms with the Criminal Law Advisory Committee for use in both adult and juvenile proceedings but determined that the nomenclature used in the two case types would result in a form difficult for a lay user to navigate.

Fiscal and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Forms JV-742 and JV-743, at pages 4–6
2. Chart of comments, at pages 7–25

PARTY WITHOUT AN ATTORNEY OR ATTORNEY:	STATE BAR NO. (if applicable):	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		

DRAFT
Not approved by the Judicial Council

REQUEST TO VACATE DISPOSITION AND DISMISS PENAL CODE SECTION 647f ADJUDICATION

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, 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:
  - Put your name and contact information in the box at the top of the form and in item 1 below.
  - 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.
  - Fill out item 2 about the Penal Code section 647f offense.
  - If you are on probation now for the Penal Code section 647f offense, check item 3 to ask the judge to make new dispositional orders (a new sentence) and take the charge off your record.
  - If you have completed probation for the Penal Code section 647f offense, check item 4 to ask the judge to take the charge off your record. After the charge is taken off your record, it can't be used against you later.
  - You can check item 5 if you do not want to come to court if there is a hearing.
  - If you will need an interpreter, ask for one in item 6.
  - If you check the box in item 7, you are giving up your right to have the same judge who put you on probation hear your request. If you don't check the box in item 7, your case *may* be heard by the judge who put you on probation, or the court will have a different judge hear your request.

1. MY INFORMATION

My name is:

I was born on *(date):*

2. OFFENSE INFORMATION

On (*date*): a petition was filed in county that said I came within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Penal Code section 647f. The court found the allegations in that petition were true on *(date):* .

CASE NAME:	CASE NUMBER:

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 item 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 get a new disposition and the charge will be dismissed.

4. REQUEST TO DISMISS ADJUDICATION AND VACATE DISPOSITION

☐ I am no longer a ward of the court (completed probation) for the Penal Code section 647f offense in item 2. I request that the court dismiss the 647f charge (take the charge off my record) and vacate the related disposition 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 JUDGE WHO ORDERED MY DISPOSITION

☐ I give up my right to have my request heard by the judge who ordered my disposition. I know that even if I do not give up this right, the hearing might not be in front of the original judge because he or she may be unavailable.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER AFTER REQUEST TO VACATE DISPOSITION AND DISMISS PENAL CODE SECTION 647f ADJUDICATION	CASE NUMBER: Date: Time: Department:

From the request filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds and orders as follows:

1. **NEW DISPOSITION AND DISMISSAL**

☐ The applicant is eligible for the requested relief. The request is **GRANTED**. The court vacates the disposition related to the designated 647f adjudication and makes the following additional orders:

a. ☐ The following Penal Code section 647f adjudication is dismissed as legally invalid *(indicate date of petition):*

b. ☐ Wardship and delinquency jurisdiction are terminated.

c. ☐ Delinquency jurisdiction remains in effect. All prior orders remain in full force and effect. The court vacates the following terms and conditions of probation *(specify):*

2. **VACATE COMPLETED PROBATION AND DISMISS ADJUDICATION**

☐ The applicant is eligible for the requested relief. The request is **GRANTED**. The court hereby dismisses the adjudication for a violation of Penal Code section 647f as legally invalid, and vacates the associated disposition.

3. **HEARING REQUIRED**

☐ More information is needed to determine whether the applicant is eligible for the requested relief. The matter is set for a hearing on *(date)* in Department .

4. **REQUEST DENIED**

☐ The applicant is ineligible for the requested relief. The request is denied.

IT IS SO ORDERED.

Dated:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
JV-743 [New January 1 , 2019]

ORDER AFTER REQUEST TO VACATE DISPOSITION AND DISMISS PENAL CODE SECTION 647f ADJUDICATION

Penal Code, §§ 1170.21, 1170.22
Expires January 1, 2029
www.courts.ca.gov

SP18-23

Juvenile Law: Decriminalization of PC 647f (adopt forms JV-742 and JV-743)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Nikki P. Miliband, President	AM	Senate Bill 239 (Stats. 2017, ch. 537), repealed Penal Code section 647f and invalidated prior convictions under the statute. The bill also added Penal Code section 1170.22 which establishes a procedure for dismissal of convictions under section 647f and resentencing, if appropriate. Subdivision (h) of the section 1170.22, makes this relief applicable to juvenile adjudications. The proposed forms, JV-744 ("Request to Resentence and Dismiss Juvenile Penal Code section 647f Offense)") and JV-746 (Order After Request to Reduce Juvenile Penal Code Section 647f Offense") appropriately address the stated purposes and effectively facilitate dismissal and resentencing under section 1170.22. Noting that children may no longer be prosecuted for prostitution, the proposal recommends the forms sunset after five years. While including a sunset date is a good idea, the relief offered by section 1170.22 may not come to the attention of qualifying individuals until much later. Accordingly, a ten-year sunset date would be more appropriate.	No response necessary. The committee agrees that it is prudent to extend the length of the sunset period to 10 years. The forms will be modified accordingly.
2.	Superior Court of Los Angeles County	AM	JV-742 should include a "proof of service" section.	Form JV-742 will be served by the court when it is filed by a self-represented litigant;

	Commentator	Position	Comment	Committee Response
				consequently, a proof of service is not necessary. Likewise, attorneys typically have a standard proof of service that can be used to prove service form JV-742.
			Request for Specific Comments: 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? Sunset of the forms in 5 years may be a problem, if former wards are unaware and come to the court after the 5 year period.	The committee agrees that the five-year sunset period may be too short and will revise the form to sunset after 10 years.
			Would the proposal provide cost savings? If so please quantify. There are no cost savings.	No response required.
			What would the implementation requirements be for courts? Training and creation of procedures will be required.	No response required.
3.	Superior Court of Riverside by Susan D. Ryan, Chief Deputy of Legal Services	AM	Position on the Proposal: Agree with the proposal with modifications.	
			We agree that Penal Code section 1170.22 requires the development of forms and that it is beneficial to have forms that are	No response required.

	Commentator	Position	Comment	Committee Response
			specific to juvenile proceedings. We request the Committee consider including a space on page 1 of JV-742 for the petitioner to indicate the date of the petition, if known, that is to be dismissed or resentenced. Response to Request for Specific Comments: • Does the proposal appropriately address the stated purpose? Yes. On form JV-742, page 1, it would also be helpful to have a place for the petitioner to indicate the petition date that will be dismissed or resentenced. On form JV-742, item 7 is confusing. Suggested modification: "I understand that I have the right to have the judge who originally sentenced me hear my request. I understand that if I waive this this right, I may not have the hearing in front of the original judge." Will hearings always be held or can these be	The committee will revise form JV-742 to include a request for the date of the petition. No response required. The committee will revise form JV-742 to include a space for the date of the petition. The committee will revise the language in item number seven to make it clearer that even if the applicant wants to be resentenced by the judge who originally sentenced them, that may not be possible. Item seven will be revised as follows: "I know that even if I do not give up this right, the hearing might not be in front of the original judge because he or she may be unavailable." The committee will revise form JV-743 to

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

	Commentator	Position	Comment	Committee Response
			ruled on in chambers. There needs to be a place either on the JV-742 or the JV-743 for the court to set the matter for a hearing.	include an option for the judge to set the matter for a hearing.
			• Is five years a sufficient time period to provide young people time to request vacatur or should the sunset date be later? Probably, however there may be an occasional request after five years.	The committee agrees that the five-year sunset period may be too short and will revise the form to sunset after 10 years.
			• Would the proposal provide cost savings? No. We do not anticipate many of these cases so the creation of forms will likely not have any measureable impact.	The committee agrees that this proposal will not have any measurable financial impact.
			• What would the implementation requirements be for courts? Clerks' office and courtroom staff would need to be trained on how to process these types of requests and orders, approximately one hour needed. Procedures would need to be created for filing the requests, setting the hearings and completing minute entries. Codes would need to be created in the case management system for processing the documents and hearings. Procedures would also need to be updated for the sealing of records as well as processing Welfare & Institutions Code § 827 requests.	The committee agrees that this proposal will necessitate minimal implementation procedures.

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	Commentator	Position	Comment	Committee Response
			• Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			• How well would this proposal work in courts of different sizes? The same updates to procedures, codes, and training would likely need to occur in any size court. The proposals should work the same for courts of any size.	The committee agrees with this assessment.
4.	Superior Court of San Bernardino County by Executive Office	AM	Agree with a sunset of 5 years as was done with Prop 47.	The committee agrees with the commentators who expressed concern that the five-year sunset period is too short. As such, the committee agrees that the five-year sunset period may be too short and will revise the form to sunset after 10 years.
			The form will allow arrest and adjudications from various jurisdictions across the state; however, the minors are often transferred from one county to another. Clarification could be added such as the county where your case was dispositioned and the county [sic] would assist the court in ensuring the document was filed in the correct court jurisdiction.	The committee agrees that it would be useful to know the county of disposition and will revise the form to include that question.
			If the youth chooses not to appear at the	While the committee declines to include a

	Commentator	Position	Comment	Committee Response
			court hearing, there should be an area where the minor can request certified copies and indicate a mailing address if different then the address on the Request. (i.e. PO Box).	request for certified copies on form JV-742, the form will be revised to include a section where the applicant can include an address other than the one listed in the caption for service of the order.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	□ *Does the proposal appropriately address the stated purpose?* Yes, for the most part. □ *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?* A five-year sunset date would be appropriate if the forms are only needed for active cases. By the end of five years, there should be no more active cases. If the forms are to be used for closed cases, the forms might be needed for much longer, since juvenile delinquency cases are destroyed when a person reaches 38 years of age. □ *Would the proposal provide cost savings?* Unknown. □ *What would the implementation requirements be for courts?* Print and distribute revised forms to court staff and attorneys. Train court staff how to process	No response required. The committee agrees that the five-year sunset period may be too short and will revise the form to sunset after 10 years. No response required. The committee agrees that this proposal will not have any measurable financial impact.

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	Commentator	Position	Comment	Committee Response
			new forms. Create or revise written internal procedures. □ *Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Probably. □ *How well would this proposal work in courts of different sizes?* Unknown. 1) Make the titles of the two forms match. 2) The term for "conviction" in juvenile court is "true finding". Our court does not normally use the term "sentence" in juvenile court. 3) PC 1170.21 seems to make relief from a prior true finding automatic, without the need for a request to the court. These forms are needed to seek relief when a person is still on probation. It appears that item 4 on the request and item 2 on the order are not necessary.	No response required. No response required. The committee agrees that the titles of the forms should match and will revise form JV-743 to match form JV-742. The committee agrees that the term "conviction" should not be used and will replace it with the term "charge." This point is well taken; it is true that relief is automatic when the applicant is no longer on probation. However, the committee believes it is prudent to leave the forms as they are. While the relief is not contingent on filing the forms, their use allows the courts to ensure that the relief has been provided.

	Commentator	Position	Comment	Committee Response
			4) There should be a place on the order to state the new maximum term of confinement.	The committee declines to include a place to state the maximum confinement time. In the rare instance where the person has additional open charges, the court can use a separate order form for that purpose.
			5) As stated in the proposal, PC 647f charges are extremely rare in juvenile court. These forms could be helpful, but courts probably will not see many of these requests.	No response required.
			Form JV-742	
			Title: Per PC § 1170.21, a conviction (in juvenile court, an adjudication) is "vacated"; a charge is "dismissed"; and an arrest is "deemed to have never occurred." PC § 1170.22(h) uses "adjudications" and "dispositions" for juvenile delinquency. Nothing in the proposed form addresses a request to dismiss charges, so our court suggests deleting "DISMISS." Our court also suggests changing the **title** and **center footer** (especially the term	The committee will modify the title as indicated below. As to dismissal, forms JV-742 and JV-743 do address that issue but the committee is aware of this commenter's position that dismissal is automatic if applicant is no longer on probation. The committee, however, believes it is necessary to leave the dismissal language on the forms because there may be cases where an applicant is on probation solely for a 647f offense and thus needs to petition for recall of

	Commentator	Position	Comment	Committee Response
			"RESENTENCE," which is inappropriate for juvenile delinquency) to: REQUEST TO VACATE ADJUDICATION AND/OR RECALL DISPOSITIONAL ORDER FOR PENAL CODE SECTION 647f OFFENSE	the disposition and dismissal of the 647f charge. The title will be modified as follows: REQUEST TO VACATE DISPOSITION AND DISMISS PENAL CODE SECTION 647F ADJUDICATION
			Page 1, left footer: Replace "Rev." with "New."	The forms will be revised accordingly.
			First bullet point: Suggested edit. 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~~ request a new dispositional order and have the charge or adjudication taken off your record. …	The committee appreciates this comment but declines to accept it, since these forms are intended to use language that is easy to understand and the term "adjudication" is a complicated legal term.
			Second bullet point: Suggest deleting "you can."	The form will be revised accordingly.

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	Commentator	Position	Comment	Committee Response
			If this form asks for information that you do not have, ~~you can~~ contact your attorney. If you don't have an attorney …	
			Instruction D: Suggest deleting "also" and "(a new sentence)."	The committee will delete "also" but, after consideration, the committee has decided not to delete "a new sentence" because it clarifies what "disposition" refers to.
			If you are on probation now for the … 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.	
			Instruction E: Suggest changing "gets" to "is."	The form will be revised accordingly.
			After the charge ~~gets~~ is taken off your record, it can't be used against you later.	
			Instruction F: Suggest changing "sentenced you" to "made your	Instruction F will be revised to say, "Your case may be heard by the judge who put you on probation…"

	Commentator	Position	Comment	Committee Response
			dispositional orders" and inserting a comma before "or the court …." Your case may be heard by the judge who originally ~~sentenced you~~ made your dispositional orders, or the court will have a different judge hear your request. Caveat: *This instruction might be considered misleading because it does not inform the petitioner of his or her right to have the request heard by the judge who made the original dispositional orders.* Query – Shouldn't there be some explanation of the consequences of checking item number 7 (i.e., waiving the right)? Perhaps add: "If you check the box in item number 7, you are giving up your right to have your request by the judge who originally made your dispositional orders." Also, because F deals with item 7, I suggest moving F to the bottom of the list of instructions and re-lettering the next two instructions (change G to F [item 5]; change	The committee agrees that including this language in the instructions would be helpful to applicants using this form. The form will be modified as recommended.

	Commentator	Position	Comment	Committee Response
			H to G [item 6]; change F to H).	
			Instruction G: Suggested change. ~~You can check item number 5 if you do not want to come to court if there is a hearing.~~ If there is a hearing and you do not want to come to court, check item number 5.	The committee declines this modification, as it could be read to suggest that there may already be a hearing scheduled when the form is completed.
			Page 2, Item 3: Delete "(RESENTENCING)," insert "item" for consistency, and change terminology as indicated. REQUEST FOR A NEW DISPOSITIONAL ORDER ~~(RESENTENCING)~~ I am currently subject to a	The committee declines to delete "resentencing," as it clarifies a complicated legal term. The committee agrees to modify the language as follows: I am currently subject to a dispositional order (on probation) for the Penal Code section 647f offense in item number 2. I request that the dispositional order be recalled and relief

	Commentator	Position	Comment	Committee Response
			dispositional order (on probation) for the Penal Code section 647f offense in item 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~~ adjudication will be ~~dismissed and~~ vacated and the dispositional order will be recalled.	be granted in accordance with Penal Code Sections 1170.21 and 1170.22 so that I will get a new disposition and the charge will be dismissed.
			Page 2, Item 4: Change "FOR DISMISSAL" to "TO VACATE ADJUDICATION," insert "item" for consistency, and edit as indicated.	The committee will revise the form so that the title of this item reads: "REQUEST TO DISMISS ADJUDICATION AND VACATE DISPOSITION."
			REQUEST ~~FOR DISMISSAL~~ TO VACATE ADJUDICATION I am no longer a ward of the court ~~(~~and I have completed probation~~)~~ for the Penal Code section 647f offense in item number 2. I request that the court ~~dismiss and~~ vacate the ~~conviction~~ adjudication (take the charge off my record) because it is invalid under Penal Code sections	The committee agrees to modify the language as follows: I request that the court dismiss the 647f charge and vacate the related disposition because it is invalid under Penal Code sections 1170.21 and 1170.22.

	Commentator	Position	Comment	Committee Response
			1170.21 and 1170.22. **Page 2, Item 7, Title:** Delete "SENTENCING." WAIVER OF HEARING BY ORIGINAL ~~SENTENCING~~ JUDGE **Page 2, Item 7:** Change "waive" to "give up," change "sentenced me" to "ordered my disposition," and insert ", even." I ~~waive~~ give up the right to have the judge who originally ~~sentenced me~~ ordered my disposition hear my request. I understand that, even if I don't ~~waive~~ give up this right, I will not have the hearing in front of the original judge if he or she is unavailable. *Alternative version:*	The committee agrees to modify the language as follows: WAIVER OF HEARING BY JUDGE WHO ORDERED MY DISPOSITION The committee agrees to modify the language as follows: "I give up my right to have my request heard by the judge who ordered my disposition. I understand that even if I don't give up this right, I will not have the hearing in front of the original judge if she or she is unavailable." The language has been modified, as set forth above.

	Commentator	Position	Comment	Committee Response
			I give up the right to have my request heard by the judge who originally ordered my disposition. I understand that, even if I don't give up this right, the original judge will not hear my request if he or she is unavailable. **Form JV-743** **Title:** Change "TO REDUCE JUVENILE" to "FOR RELIEF RELATED TO." If it is deemed necessary to have "JUVENILE" in the title, move it to the end so that it does not look like an adjective modifying "PENAL CODE SECTION 647f OFFENSE." **ORDER AFTER REQUEST ~~TO REDUCE JUVENILE~~ FOR RELIEF RELATED TO PENAL CODE SECTION 647f OFFENSE -- JUVENILE**	The committee agrees the title should be modified as follows: ORDER AFTER REQUEST TO VACATE DISPOSITION AND DISMISS PENAL CODE SECTION 647F ADJUDICATION

	Commentator	Position	Comment	Committee Response
			First sentence: For consistency, change "petition/application" to "request" and insert "and orders" before "as follows." From the ~~petition/application~~ request filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds and orders as follows: **Item 1:** VACATED ADJUDICATION AND 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: The adjudication for the following Penal Code section 647f offense is vacated ~~and dismissed~~ as legally invalid (*indicate date of petition*):	The committee agrees with these suggestions and will revise the form accordingly. The committee declines to change the title associated with item number one; however, the text of that item will be revised to state that "The request is granted. The court vacates the disposition related to the designated charge and makes the following additional orders: (a) The following Penal Code section 647f adjudication is dismissed as legally invalid (indicate date of petition): (b) Wardship and delinquency jurisdiction is terminated."

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	Commentator	Position	Comment	Committee Response
			Wardship and delinquency jurisdiction for this offense is terminated. Delinquency jurisdiction remains in effect. All prior orders remain in full force and effect. The court vacates only the following ~~condition number(s) _____ of the~~ terms and conditions of probation~~:~~: _____ _____ _____ _____. *Note: Probation conditions on dispositional orders might not be numbered, depending on local practice. If they are numbered, the court clerk can simply specify the number(s) on the blank lines.* **Item 2:**	The committee agrees with this suggestion and will revise the form to state "The court vacates the following terms and conditions of probation (specify):" No response necessary.

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

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	Commentator	Position	Comment	Committee Response
			~~DISMISSAL OF~~ VACATED ADJUDICATION AFTER COMPLETED PROBATION The applicant is eligible for the requested relief. The request is GRANTED. The court hereby vacates ~~and dismisses~~ the adjudication on (*date*): _____ for a violation of Penal Code section 647f as legally invalid. **Add Item 3:** RELIEF DENIED The applicant is NOT eligible for the requested relief. The request is DENIED. *OR* OTHER: _____	The committee agrees to revise the title of item 2 as follows: VACATE COMPLETED PROBATION AND DISMISS ADJUDICATION The committee agrees to revise the second sentence of item 2 as follows: "The court hereby dismisses the adjudication for a violation of Penal Code section 647f as legally invalid and vacates the associated disposition." The committee agrees that it is prudent to include a checkbox that allows the court to deny the requested relief if the applicant is ineligible. Form JV-743 will be revised to include a new item that provides that option.

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	Commentator	Position	Comment	Committee Response

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

Item number: 22

RUPRO ACTION REQUEST FORM

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

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

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.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Juvenile Law: Vacatur of Convictions Related to Human Trafficking and Preservation of Extended Foster Care Eligibility

Rules, Forms, Standards, or Statutes Affected
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-INFO, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683; approve forms JV-748 and JV-749

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 21, 2018

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend three rules and adopt one rule of the California Rules of Court, revise 10 Judicial Council forms, and approve two 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 suffered adjudications related to human trafficking that are eligible for vacatur under Penal Code section 236.14. The committee further recommends revising form JV-462 to include certain changes necessitated by recent legislation, making a technical change to form JV-462, and revising form JV-367 to reflect how the form is typically used. Finally, the committee recommends amending rules 5.903 and 5.906 to clarify who may attend status review hearings for former wards who have become nonminor dependents.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. **Amend rule 5.906**, *Request by nonminor for the juvenile court to resume jurisdiction*, to clarify that a young person whose underlying conviction was vacated pursuant to Penal Code section 236.14 is eligible for extended foster care;

2. **Revise form JV-464-INFO**, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care*, to state 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;

3. **Revise form JV-466**, *Request to Return to Juvenile Court Jurisdiction and Foster Care*, to include sections that seek information relevant to an applicant who has obtained relief under Penal Code section 236.14;

4. **Revise form JV-470**, *Findings and Orders Regarding Prima Facie Showing on Nonminor's Request to Reenter Foster Care*, to include orders applicable to a young person whose conviction was vacated under Penal Code section 236.14;

5. **Revise form JV-472**, *Findings and Orders After Hearing to Consider Nonminor's Request to Reenter Foster Care*, to include orders applicable to a young person whose conviction was vacated under Penal Code section 236.14;

6. **Adopt rule 5.811**, *Modification to transition jurisdiction for a ward older than 17 years and 5 months with a petition subject to vacatur*, to establish the procedure that must be followed when a young person aged 17 years and 5 months or older is eligible for vacatur.

7. **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*, 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 because the young person is no longer subject to a delinquency adjudication and to specify that the court's order modifying jurisdiction to transition jurisdiction must be made before the underlying petition is vacated and must contain reference to certain findings required by title IV-E, as well as information about sealing and destruction of records related to the arrest and/or conviction..

8. **Revise form JV-680**, *Findings and Orders for Child Approaching Majority—Delinquency*, to include language that states the form also applies to children whose underlying petition is subject to vacatur pursuant to Penal Code section 236.14.

9. **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 include the findings and orders that will transition the young person to the transition jurisdiction of the juvenile court.

10. **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 include the findings and orders that will transition the young person to the transition jurisdiction of the juvenile court.

11. **Approve form JV-748** *Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim),* which allows applicants to request that arrests and adjudications from various jurisdictions be expunged;

12. **Approve form JV-749** *Order After Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim).*

13. **Revise form JV-462** *Findings and Orders After Nonminor Dependent Status Review Hearing,* so that it comports with the findings and orders required by continuum of care reform.

14. **Revise form JV-367** *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor,* to ensure that the title IV-E findings are made at hearings where termination of nonminor dependent status is considered but not ordered.

15. **Revise form JV-320** *Orders under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31,* to make a technical change.

16. **Amend rule 5.903** *Nonminor Dependent Status Review Hearing,* to clarify who is entitled to attend nonminor dependent review hearings.

17. **Amend rule 5.906** *Request by Nonminor for the Juvenile Court to Resume Jurisdiction,* to clarify who is entitled to attend nonminor dependent review hearings.

Relevant Previous Council Action

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. Bill 787).[1] Rule 5.812 was last amended and six of the 10 forms were last revised in 2014 to implement clean-up legislation related to extended foster care. Likewise, the impetus for the

[1] 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).

2016 amendments to rule 5.906 and revisions to forms JV-464-INFO and JV-466 was the implementation of additional legislation related to extended foster care. 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.

Analysis/Rationale

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. Consistent with the legal changes made by AB 604, the proposed changes to the rules and forms will enable young people who may have exited the system after their underlying petition was vacated pursuant to Penal Code section 236.14, to reenter juvenile jurisdiction.

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.

The committee also proposes approving forms that will enable young people to take advantage of the relief offered in Penal Code section 236.14. The proposed form, a petition for vacatur and an order, will create a process for vacating offenses described in Penal Code section 236.14. . It should be noted that the Criminal Law Advisory Committee (CLAC) circulated a similar proposal for comment.[2] However, based on the comments received CLAC is not moving forward with its proposal at this time. Other than comments raised about using one form for adjudications from multi-jurisdictions, the comments received by CLAC do not apply to juvenile cases.

[2] The CLAC proposal, *Criminal Procedure: Vacatur of Convictions Related to Human Trafficking*, can be found here (eventually this will be a hyperlink).

Policy implications

Aside from the proposed technical changes, the recommended amendments and revisions reflect an overarching policy shift in how the juvenile justice and child welfare systems treat victims of commercial sexual exploitation. There has been recognition, at both the legislative and judicial level, that young people caught up in commercial sexual exploitation are victims, not delinquents, and should be afforded trauma-informed services and care. This policy shift is occurring at both the legislative and judicial level.

Comments

This proposal circulated for comment as part of the spring 2018 invitation to comment cycle from April 6, 2018, to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, CASA programs, and other juvenile and family law professionals.

Fourteen commenters provided comments on this proposal. All commenters either agreed with the proposal or agreed with the proposal if it were modified. The comments received raised six main issues.

The recommendation in the proposal to sunset forms JV-748 and JV-749 received 10 comments. Many of these commenters strongly opposed having these forms sunset at all, or proposed that the sunset period be lengthened. These commenters noted that children continue to be arrested and adjudicated wards based on prostitution-related crimes, and that survivors of trafficking and exploitation need time to heal before they are able to access all the services and resources available to them. In light of these comments, the committee decided against having the forms sunset. The sunset date was removed from forms JV-748 and JV-749, and the sunset language in rule 5.811 was deleted.

Three commenters suggested that young people who have been arrested or adjudicated wards based on prostitution, solicitation, or loitering should be considered per se victims of trafficking because children can no longer be arrested for or charged with those crimes. After a robust discussion about the standard of evidence required by statute and the operation of the form that circulated for comment, the committee declined to follow the commenters' recommendation. The form, as it circulated for comment, allows the court to grant the applicant's request to vacate a conviction without a hearing, which achieves the result sought by the commenter.

Citing Penal Code section 236.14, three commenters recommended that form JV-748 include a section where the applicant can request that the court grant additional relief. Acknowledging that the section 236.14 allows an applicant to make such requests, the committee agreed that form JV-748 should be revised to include a section where the applicant can explain the relief requested and why it is necessary. The committee determined that form JV-749 should likewise be revised to include a section where the court can grant or deny the requested relief.

Fines and fees were also a subject of comment. Three commenters recommended that forms JV-748 and JV-749 be revised to allow applicants to request, and the court to order, reimbursement for already-paid fines and fees. While the committee found this request pertinent, Penal Code section 236.14 does not state that paid fines and fees should be reimbursed. In the absence of statutory language authorizing reimbursement for fines and fees already paid, it is beyond the Judicial Council's purview to require such an order. However, the committee determined that form JV-749 should be revised to clarify that outstanding fines and fees are set aside and discharged when the underlying offense is vacated.

Three commenters suggested that the court be responsible for service of form JV-748, even when the applicant is represented by an attorney. These commenters suggested that requiring the court to serve the form would lead to uniformity. After weighing the benefits of court service, such as efficiency and clarity of process, against the impact on the clerk's workload, the committee decided not to require the court to serve form JV-748. Instead, as circulated, the form will be served by the court only when the applicant is unrepresented.

Finally, three commenters suggested that it would be useful for applicants, particularly unrepresented applicants, to have clarity on when the application will be considered unopposed. Considering the timeline set forth in Penal Code section 236.14, which states that the application will be deemed unopposed 45 days after the prosecution receives service, the committee agreed to include an instruction on form JV-748 that states the application will be considered unopposed 60 days from the court file stamp date. Sixty days was selected to provide a cushion for service by mail.

Notably, none of the commenters expressed concern about the multi-jurisdictionality of form JV-748. Multi-jurisdictionality was an issue for the CLAC proposal. The Invitation to Comment for this juvenile proposal included a specific question about the table format proposed and none of the commenters expressed concern about the issue.

Alternatives considered

As this proposal took shape, the committee considered how best to allow an applicant to consolidate arrests and adjudications from different jurisdictions on one form. The committee discussed alternatives to the table that is currently included in form JV-748 but after consideration, it was determined that the table was the best solution.

The committee also considered the necessity of further anonymizing juvenile forms. Penal Code section 236.14, which applies to both adult convictions and juvenile adjudications, requires that the applicant's name be anonymized on documents that are available to the public. Juvenile forms are already confidential and only available to the public upon court order; however, the committee considered whether to require the use of initials on forms JV-748 and JV-749. In the end, the confidentiality already afforded juvenile forms was deemed to be sufficient.

Fiscal and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.811, 5.812, 5.903, and 5.906, at pages 8–18.
2. 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 19–60.
3. Chart of comments, at pages 61–147.

Rule 5.811 of the California Rules of Court is adopted, and rules 5.812, 5.903, and 5.906 are amended, effective January 1, 2019, to read:

Rule 5.811. Modification to transition jurisdiction for a ward older than 17 years and 5 months with a petition subject to dismissal (Welf. & Inst. Code, §§ 450, 451, 727.2(i)–(j), 778; Pen. Code, § 236.14)

(a)Purpose

This rule provides the procedures that must be followed to modify delinquency jurisdiction to transition jurisdiction for a young person who is older than 17 years, 5 months of age and:

(1) Is under a foster care placement order;

(2) Wants to remain in extended foster care under the transition jurisdiction of the juvenile court;

(3) Is not receiving reunification services;

(4) Does not have a hearing set for termination of parental rights or establishment of guardianship; and

(5) The underlying adjudication establishing wardship over the young person is subject to vacatur under Penal Code section 236.14.

(b)Setting and conduct of hearing

(1) The probation officer must request a hearing for the court to modify delinquency jurisdiction to transition jurisdiction and vacate the underlying adjudication.

(2) The hearing must be held before a judicial officer and recorded by a court reporter.

(3) The hearing must be continued for no more than five court days for the submission of additional evidence if the court finds that the report and, if required, the Transitional Independent Living Case Plan submitted by the probation officer do not provide the information required by (d), and the court is unable to make all the findings required by (e).

(c)Notice of hearing

(1) The probation officer must serve written notice of the hearing in the manner provided in section 295.

(2) Proof of service of notice must be filed by the probation officer at least five court days before the hearing.

(d)Reports

At least 10 calendar days before the hearing, the probation officer must submit a report to the court that includes information regarding:

(1) Whether the young person is subject to an order for foster care placement and is older than 17 years, 5 months of age and younger than 18 years of age;

(2) Whether the young person is a nonminor who was subject to an order for foster care placement on the day of the young person's 18th birthday and is within the age eligibility requirements for extended foster care;

(3) Whether the young person was removed from the physical custody of his or her parents, adjudged to be within the jurisdiction of the juvenile court under section 725, and ordered into foster care placement; or whether the young person 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 within the jurisdiction of the juvenile court under section 725 and was ordered into a foster care placement, including the date of the initial removal findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—as well as whether the young person continues to be removed from the parents or legal guardian from whom the young person was removed under the original petition;

(4) Whether each parent or legal guardian is currently able to provide the care, custody, supervision, and support the child requires in a safe and healthy environment;

(5) Whether the young person signed a mutual agreement with the probation department or social services agency for placement in a supervised setting as a transition dependent and, if so, a recommendation as to which agency should be responsible for placement and care of the transition dependent;

(6) Whether the young person plans to meet at least one of the conditions in section 11403(b) and what efforts the probation officer has made to help the young person meet any of these conditions;

(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 adjudication is subject to vacatur under 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

(8) Whether the young person has had an opportunity to confer with his or her attorney.

In addition to the findings listed above, for children who are older than 17 years, 5 months of age but younger than 18 years of age, the court must make the following findings:

(1) Whether the young person's return to the home of his or her parent or legal guardian would create a substantial risk of detriment to the young person's safety, protection, or physical or emotional well-being—the facts supporting this finding must be stated on the record;

(2) Whether reunification services have been terminated; and

(3) Whether the young person's case has been set for a hearing to terminate parental rights or establish a guardianship.

(f)Orders

The court must enter the following orders:

(1) An order adjudging the young person a transition dependent as of the date of the hearing or pending his or her 18th birthday and granting status as a nonminor dependent under the general jurisdiction of the court. The order modifying the court's jurisdiction must contain all of the following provisions:

(A) A statement that "continuance in the home is contrary to the child or nonminor's welfare" and that "reasonable efforts have been made to prevent or eliminate the need for removal";

(B) 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

(C) Identification of the agency that is responsible for placement and care of the child based on the modification of jurisdiction.

(2) An order vacating the underlying adjudication and dismissing the associated delinquency petition under Penal Code section 236.14.

(3) An order directing the Department of Justice and any law enforcement agency that has records of the arrest to seal those records and, three years from the

date of the arrest or one year after the order to seal, whichever occurs later, destroy them.

(4) An order continuing the appointment of the attorney of record, or appointing a new attorney as the attorney of record for the nonminor dependent.

(5) An order setting a nonminor dependent status review hearing under section 366.31 and rule 5.903 within six months of the last hearing held under section 727.2 or 727.3.

Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority (§§ 450, 451, 727.2(i)–(j), 778)

(a) Hearings subject to this rule

* * *

(b) Conduct of the hearing

(1) * * *

(c) Reports

(1) In addition to complying with all other statutory and rule requirements applicable to the report prepared by the probation officer for a hearing described in (a)(1)–(4), the report must state whether the child was provided with the notices and information required under section 607.5 and include a description of:

(A) The child's progress toward meeting the case plan goals that will enable him or her to be a law-abiding and productive member of his or her family and the community. This information is not required if dismissal of delinquency jurisdiction and vacatur of the underlying adjudication is based on Penal Code section 236.14.

(B)–(E) * * *

(F) For a child other than a dual status child, including a child whose underlying adjudication is subject to vacatur under Penal Code section 236.14, the probation officer's recommendation regarding the modification of the juvenile court's jurisdiction over the child from that of a ward under section 601 or 602 to that of a dependent under section

300 or to that of a transition dependent under section 450 and the facts in support of his or her recommendation.

(2) * * *

(d) Findings

(1) At the hearing described in (a)(1)–(4), in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written documentation of the hearing:

(A) Whether the rehabilitative goals for this child have been met and juvenile court jurisdiction over the child as a ward is no longer required. The facts supporting the finding must be stated on the record. This finding is not required where dismissal of delinquency jurisdiction is based on Penal Code section 236.14.

(B)–(C) * * *

(D) For a child other than a dual status child:

(i) Who was not subject to the court's dependency jurisdiction at the time he or she was adjudged a ward and is currently subject to an order for a foster care placement, including a child whose underlying adjudication is subject to vacatur under Penal Code section 236.14, whether the child appears to come within the description of section 300 and cannot be returned home safely. The facts supporting the finding must be stated on the record;

(ii)–(v) * * *

(2) * * *

(e) Orders

(1)–(3) * * *

(4) For a child who was not subject to the court's dependency jurisdiction at the time he or she was adjudged a ward and is currently subject to an order for a foster care placement, including a child whose underlying adjudication is subject to vacatur under Penal Code section 236.14, the court must:

(A) Order the probation department or the child's attorney to submit an application under section 329 to the county child welfare services department to commence a proceeding to declare the child a dependent of the court by filing a petition under section 300 if the court finds:

(i) The child does not come within the description of section 450(a);

(ii) The rehabilitative goals for the child included in his or her case plan have been met and delinquency jurisdiction is no longer required,~~;~~ or the underlying adjudication is subject to vacatur under Penal Code section 236.14; and

(iii) The child appears to come within the description of section 300 and a return to the home of the parents or legal guardian may be detrimental to his or her safety, protection, or physical or emotional well-being.

(B)–(C) * * *

(f) Modification of jurisdiction—conditions

(1) Whenever the court modifies its jurisdiction over a dependent or ward under section 241.1, 607.2, or 727.2, the court must ensure that all of the following conditions are met:

(A) The petition under which jurisdiction was taken at the time the dependent or ward was originally removed from his or her parents or legal guardian and placed in foster care is not dismissed until after the new petition is sustained; and

(B) The order modifying the court's jurisdiction contains all of the following provisions:

(i) A reference to the original removal findings, the date those findings were made, and a statement that the finding "continuation in the home is contrary to the child's welfare" and the finding "reasonable efforts were made to prevent removal" made at that 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 adjudication is vacated and the arrest upon which it was based is expunged; 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 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 independence and establishing lifelong connections with caring and committed adults.

(b) Setting and conduct of a nonminor dependent status review hearing

(1)–(2) * * *

(3) The hearing may be attended, as appropriate, by participants invited by the nonminor dependent in addition to those entitled to notice under (c). If delinquency jurisdiction is dismissed in favor of transition jurisdiction under Welfare and Institutions Code section 450, the prosecuting attorney is not permitted to appear at later review hearings for the nonminor dependent.

(4)–(5) * * *

(c) Notice of hearing (§ 295)

* * *

(d) Reports

* * *

(e) Findings and orders

* * *

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

(a) Purpose

* * *

(b) Contents of the request

* * *

(c) Filing the request

* * *

(d) Determination of prima facie showing

(1) Within three court days of the filing of form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

(A) ~~The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age, or the nonminor is eligible to seek assumption of dependency jurisdiction pursuant to the provisions of subdivision (c) of section 388.1;~~ The nonminor is eligible to seek assumption of dependency jurisdiction under 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 adjudication was vacated under Penal Code section 236.14.

(B)–(D) * * *

(2)–(3) * * *

(e) Appointment of attorney

* * *

(f) Setting the hearing

* * *

(g) Notice of hearing

(1) The juvenile court clerk must serve notice as soon as possible, but no later than five court days before the date the hearing is set, as follows:

(A) The notice of the date, time, place, and purpose of the hearing and a copy of the form JV-466 must be served on the nonminor, the nonminor's attorney, the child welfare services agency, the probation department, or the Indian tribal agency that was supervising the nonminor when the juvenile court terminated its delinquency, dependency, or transition jurisdiction over the nonminor, and the attorney for the child welfare services agency, the probation department, or the Indian tribe. Notice must not be served on the prosecuting attorney if delinquency jurisdiction has been dismissed, and the nonminor's petition is for the court to assume or resume transition jurisdiction under Welfare and Institutions Code section 450.

(B)–(D) * * *

(2)–(4) * * *

(h) Reports

* * *

(i) Findings and orders

* * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31	CASE NUMBER:

Child's name:
Date of birth: Age:
Parent's name *(if known):* ☐ Mother ☐ Father
Parent's name *(if known):* ☐ Mother ☐ Father

1. a. Hearing date: Time: Dept.: Room:
   b. Judicial officer:
   c. Parties and attorneys present:

2. ☐ The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), 366.25(b), or 727.31(b) and the report and recommendation of the
   ☐ social worker ☐ probation officer ☐ and other evidence.
3. ☐ The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. ☐ Notice has been given as required by law.
   b. ☐ This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
6. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. ☐ The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
   ☐ parent *(name):* ☐ Mother ☐ Father
   ☐ parent *(name):* ☐ Mother ☐ Father

Form Adopted for Mandatory Use
Judicial Council of California
JV-320 [Rev. January 1, 2019]

Welfare and Institutions Code, §§ 361.7, 366.24, 366.26, 727.3, 727.31, 727.4, 16501.1;
Cal. Rules of Court, rules 5.485, 5.504, 5.590, 5.725, 5.810, 5.820
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. a. ☐ There is clear and convincing evidence that it is likely the child will be adopted.
   b. ☐ This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9* ***unless*** *item 10, 11, 12, or 13 is applicable. If item 8a or 8b is not checked, go to item 15 or 16.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of
   a. ☐ parent *(name):* ☐ Mother ☐ Father
   b. ☐ parent *(name):* ☐ Mother ☐ Father
   c. ☐ alleged fathers *(names):*
   d. ☐ unknown mother ☐ all unknown fathers

   are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
   e. **The adoption is likely to be finalized by *(date):***
   (If item 9 is checked, go to item 17.)

10. This case involves an Indian child. The parental rights of
   a. ☐ parent *(name):*
   b. ☐ parent *(name):*
   c. ☐ Indian custodians *(names):*
   d. ☐ alleged fathers *(names):*
   e. ☐ unknown mother ☐ all unknown fathers

   are modified in accordance with the tribal customary adoption order of the *(specify):* tribe, dated and comprising pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.
   (If item 10 is checked, go to item 17.)

11. ☐ The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12. ☐ Termination of parental rights would be detrimental to the child for the following reasons: *(If item 12 is checked, check reasons below and go to item 15 or 16.)*
   a. ☐ The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
   b. ☐ The child is 12 years of age or older and objects to termination of parental rights.
   c. ☐ The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
   d. ☐ The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
      (1) under the age of 6; or
      (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:

12. e. ☐ There would be substantial interference with the child's sibling relationship.
    f. ☐ The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
    (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
    (2) The child's tribe has identified guardianship or another permanent plan for the child.

13. ☐ Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14):*
    a. ☐ is a member of a sibling group that should stay together.
    b. ☐ has a diagnosed medical, physical, or mental disability.
    c. ☐ is 7 years of age or older.

14. a. ☐ Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order):*

    (Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)

    b. ☐ Visitation between the child and
    ☐ parent *(name):* ☐ Mother ☐ Father
    ☐ parent *(name):* ☐ Mother ☐ Father
    ☐ legal guardian *(name):*
    ☐ other *(name):*
    is scheduled as follows *(specify):*

    c. ☐ Visitation between the child and *(names):*
    is detrimental to the child's physical or emotional well-being and is terminated.

15. ☐ The child's permanent plan is legal guardianship.

    ☐ *(Name):*
    is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*

    a. ☐ Visitation between the child and
    ☐ parent *(name):* ☐ Mother ☐ Father
    ☐ parent *(name):* ☐ Mother ☐ Father
    ☐ legal guardian *(name):*
    ☐ other *(name):*
    is scheduled as follows *(specify):*

    b. ☐ Visitation between the child and *(names):*
    is detrimental to the child's physical or emotional well-being and is terminated.

    c. ☐ Dependency ☐ Wardship is terminated.

    d. ☐ Dependency ☐ Wardship is not terminated. The likely date for termination of the dependency or wardship is *(date):* *(If this item is checked, go to item 17.)*

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

CHILD'S NAME:	CASE NUMBER:

16. a. ☐ The child remains placed with *(name of placement):*
with a permanent plan of *(specify):*

(1) ☐ Returning home
(2) ☐ Adoption
(3) ☐ Tribal customary adoption
(4) ☐ Legal guardianship
(5) ☐ Permanent placement with a fit and willing relative
(6) ☐ Another planned permanent living arrangement

The child's permanent plan is likely to be achieved by *(date):*

(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)

b. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father
☐ parent *(name):* ☐ Mother ☐ Father
☐ legal guardian *(name):*
☐ other *(name):*

is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

17. ☐ The child's placement is necessary.

18. ☐ The child's placement is appropriate.

19. ☐ The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.

20. ☐ The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years of age or older.)*

21. ☐ The child remains a ☐ dependent ☐ ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*

22. ☐ All prior orders not in conflict with this order will remain in full force and effect.

23. ☐ Other *(specify):*

24. ☐ Next hearing date: Time: Dept: Room:

a. ☐ Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
b. ☐ Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
c. ☐ Six-month postpermanency review

CHILD'S NAME:	CASE NUMBER:

25. The ☐ Parent *(name):* ☐ Mother ☐ Father
☐ Parent *(name):* ☐ Mother ☐ Father
☐ Indian custodian *(name):*
☐ Child
☐ Other *(name):*
have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____ _____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME: DEPT:	

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR		CASE NUMBER:
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

		Present		Present
1.	Parties *(name)*		Attorney *(name)*	
	a. Nonminor:	☐		☐
	b. Probation officer:	☐		☐
	c. County agency social worker:	☐		☐
	d. Other *(specify):*	☐		☐
2.	Parent			
	a. ☐ Father ☐ Mother *(name):*	☐		☐
	b. ☐ Father ☐ Mother *(name):*	☐		☐
3.	Legal guardian *(name):*	☐		☐
4.	Indian custodian *(name):*	☐		☐
5.	Tribal representative *(name):*	☐		☐

6. Others present
   a. Other *(name):*
   b. Other *(name):*
   c. Other *(name):*

7. **The court has read and considered and admits into evidence**
   a. ☐ The report of the social worker dated:
   b. ☐ The report of the probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-367 [Rev. January 1, 2019]

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR

Welfare & Institutions Code, §§ 391, 607.2, 607.3;
Cal. Rules of Court, rule 5.555
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

8. ☐ Notice of the date, time, and location of the hearing was given as required by law.

9. ☐ The nonminor is neither present in court nor participating by telephone and
   a. ☐ the nonminor expressed a wish not to appear for the hearing and did not appear.
   b. ☐ the nonminor's current location is unknown. Reasonable efforts ☐ were ☐ were not made to find him or her.

10. ☐ The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.

11. Remaining under juvenile court jurisdiction ☐ is ☐ is not in the nonminor's best interests. The facts supporting this determination were stated on the record.

12. a. ☐ The nonminor does not now meet any of the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
    b. ☐ The nonminor meets the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
       (1) ☐ The nonminor attends high school or a high school equivalency certificate (GED) program.
       (2) ☐ The nonminor attends a college, a community college, or a vocational education program.
       (3) ☐ The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
       (4) ☐ The nonminor is employed at least 80 hours per month.
       (5) ☐ The nonminor is incapable of doing any of the activities in (1)–(4) due to a medical condition.

13. ☐ The nonminor has an application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process ☐ is ☐ is not in the nonminor's best interests.

14. ☐ The nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief for which an active juvenile court case is required.

15. ☐ The nonminor was informed of the options available to make the transition from foster care to independence and successful adulthood.

16. ☐ The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.

17. ☐ The nonminor was informed that if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that if jurisdiction is then terminated, the court will maintain general jurisdiction for the purpose of reviewing a request to resume jurisdiction over him or her as a nonminor dependent.

18. ☐ The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition asking the court to resume dependency jurisdiction or transition jurisdiction over him or her as a nonminor dependent as long as he or she has not yet reached 21 years of age.

19. a. ☐ The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
    b. ☐ The nonminor cannot be located despite the department's reasonable efforts, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.

20. ☐ The nonminor is subject to delinquency jurisdiction and either was previously a dependent of the court under section 300 or was placed in foster care under section 727. The requirements of Welfare and Institutions Code, § 607.5, ☐ were ☐ were not met.

NONMINOR'S NAME:	CASE NUMBER:

21. ☐ The nonminor is an Indian child under the Indian Child Welfare Act and ☐ was ☐ was not informed of his or her right to choose whether the Act will continue to apply to him or her as a nonminor dependent.
    ☐ The nonminor ☐ wants ☐ does not want the Indian Child Welfare Act to continue to apply.

22. a. ☐ The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.
    b. ☐ The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare for successful adulthood upon leaving foster care.
    c. ☐ The 90-day Transition Plan is a concrete, individualized plan that specifically covers housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

Orders

23. ☐ The nonminor 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 juvenile court jurisdiction over the youth as a nonminor dependent is continued.

    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):*

    a. ☐ For a nonminor 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:

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):*

b. ☐ Family reunification services are continued.

c. The Indian Child Welfare Act ☐ does ☐ does not continue to apply.

d. 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 37, 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:

b. Other *(specify):*

37. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)

b. ☐ Other *(specify):*

38. Number of pages attached: _____

Date:

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:	
FINDINGS AND ORDERS AFTER NONMINOR DEPENDENT STATUS REVIEW HEARING	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Baliff:	Other Court Personnel:	Interpreter: Language:

1. Parties *(name):*

	Present	Attorney *(name):*	Present
a. Nonminor dependent:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐

2. 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.

Form Approved for Optional Use
Judicial Council of California
JV-462 [Rev. January 1, 2019]

Welfare & Institutions Code, §§ 224.1(b), 245, 366.1, 366.3, 366.31;
Cal. Rules of Court, rule 5.903
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

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:
    a. ☐ Attending high school or a high school equivalency certificate (GED) program.
    b. ☐ Attending a college, a community college, or a vocational education program.
    c. ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment.
    d. ☐ Employed at least 80 hours per month.
    e. ☐ 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:

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 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 29a.
   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:

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 (Wel. & Inst. 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

JV-464-INFO How to Ask to Return to Juvenile Court Jurisdiction and Foster Care

Some 18-, 19-, and 20-year-olds can reopen their court case and return to foster care. This form explains:

- The benefits of returning to foster care,
- Who qualifies to return to foster care, and
- How to ask to reopen your court case and return to a foster care placement.

What benefits can I get if I return to foster care?

If you ask the court to reopen your court case and return to foster care as a nonminor dependent, you can get money to live in supervised foster care. You may be able to live in a:

- Relative's home;
- Home of a nonrelated extended family member (a person close to your family but not related to you);
- Foster home;
- Group home if you need to because of a medical condition;
- You can also stay in a group home until your 19th birthday or until you finish high school, whichever one happens first; or
- Supervised independent living setting, such as an apartment or college dormitory.

You can also get:

- A clothing allowance,
- Case management services, and
- Independent Living Program services.

Do I qualify to return to juvenile court jurisdiction and foster care?

You qualify if you meet these requirements:

☐ **Court Jurisdiction Requirements**

- You are now 18, 19, or 20 years old and either:
- You were in foster care on your 18th birthday and your case was vacated (Pen. Code § 236.14); or,
- 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 to Ask to Return to Juvenile Court Jurisdiction and Foster Care

How do I ask the juvenile court to reopen my court case and return to foster care?

You must fill out and file the court form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care.* This form tells the court you want to reopen 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*.

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; or,

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 the juvenile court clerk's office at the courthouse in the county where your court case was closed.

Important! Keep a copy of all papers you file at court. If you file in person, the clerk can give you free copies.

Do I have to pay to file the form?

No. It's free.

Do I have to fill out other court forms?

No, unless you want to keep your contact information private. If so, do **not** put your address and other contact information on form JV-466. Instead, put it on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care.*

Who will decide if I can return to juvenile court jurisdiction and foster care?

A judge with the court in the county where your court case was closed will decide if your court case should be reopened.

The judge can decide that:

- **You do not qualify** because of your age. If this happens, you cannot file another request.
- **The information you gave to the court** shows that you do not meet one of the eligibility requirements or the court needs more information to decide your case. If this happens, the court will deny your request and send you a letter explaining why your request was denied. The court will also send you a list of lawyers who can help you with your case. You can file another request that includes the information that was missing.
- **The court has enough information** to decide your case and wants you to come to a court hearing. If this happens, you will get a notice telling you the date, time, and place of your hearing. The court will also assign a lawyer to speak for you at the hearing.

  The court will send a copy of the notice and your papers to:

  – The lawyer assigned to your case, and

  – The office that supervised you when the juvenile court's jurisdiction was dismissed. That office must make a report about your eligibility to return to foster care.

  If you ask for it on the form JV-466, the court can also send a notice to your parents or former legal guardian and the CASA office for your former CASA.

When will the hearing happen?

If you filed your court papers yourself and the court decides there is enough information to decide your case, the hearing will happen about three weeks after you filed your court papers.

If you asked a social worker or probation officer to file your court papers and the court decides there is enough information to decide your case, the hearing will happen about six weeks after you ask the social worker or probation officer to file your court papers.

What happens at the hearing?

At your hearing, the judge will review the evidence and decide your case.

If the court decides you meet the requirements, you will be allowed to return to foster care. You will also have to go back to court within 6 months to tell the court how you are doing. Your lawyer will also go with you to that hearing. If you used to be a dependent, you will be under the juvenile court's dependency jurisdiction.

If you used to be a ward, you will be under the juvenile court's transition jurisdiction.

If the court denies your request, you can file another request later if your situation changes so that you meet the requirements.

JV-466 Request to Return to Juvenile Court Jurisdiction and Foster Care

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

This form can be used to ask the court to reopen your case because your situation changed and you decide that you want to return to the court's jurisdiction and a foster care placement.

If you don't want other people (for example, a parent or brother or sister who was part of your case when you were a child) to know your contact information, do not write it in (1). Write that information on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*. Read form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care,* for information about filling out and filing the forms.

If you do not know the information asked for on this form, leave the space blank. Remember to get and keep copies of all court papers and other papers you sign or receive from the child welfare services agency or the probation department.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Name:

Court fills in case number when form is filed.

Case Number:

(1) My information:

a. My address: _____

_____

b. My city, state, zip code: _____

c. My area code and telephone number: _____

d. My date of birth: _____

(2) The location of the juvenile court that had authority over me when I was 18 years old or when my guardianship or adoption was finalized:

a. City: _____

b. County: _____

(3) The name and court file number or case number of my case in juvenile court:

a. Name of my case: _____

b. Court file number or case number: _____

(4) a. The date the juvenile court closed my case: _____

b. ☐ My arrest was expunged and my adjudication 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.

7 You must plan to meet at least one of the five conditions listed below.
Please check all that apply:

a. ☐ I plan to attend a high school or a high school equivalency certificate (GED) program.
b. ☐ I plan to attend a college, a community college, or a vocational education program.
c. ☐ I plan to attend a program or take part in activities that will help train me to be employed or will help me solve problems that prevented me from finding a job.
d. ☐ I plan to work at least 80 hours per month.
e. ☐ I cannot go to a high school, a high school equivalency certificate (GED) program, a college, a community college, or a vocational education program; take part in a program or activities to help me find a job; or work 80 hours per month because of a medical condition.

8 If you were in a guardianship on your 18th birthday or adopted from foster care, please check all that apply below. If not, skip to 9.

a. ☐ I was placed by the juvenile court in a guardianship.
b. ☐ I was adopted from foster care.
c. ☐ My guardian(s) or adoptive parent(s) were receiving payments for my support on or after my 18th birthday.
d. ☐ My guardian(s) or adoptive parent(s) died on or after my 18th birthday.
e. ☐ My guardian(s) or adoptive parent(s) are no longer supporting me.
f. ☐ My guardian(s) or adoptive parent(s) no longer receive payments for my support.

9 The judge will set a hearing about this request if the judge thinks that he or she has enough information to decide whether you have met all the requirements.

Do you want your parents or former legal guardian to be told about the hearing, if the judge sets one?

☐ NO. I do not want my parents or former legal guardian to be told about the hearing.
☐ YES. I do want my parents or former legal guardian to be told about the hearing. Their names and addresses are:

Parent's name and address: _____

_____

Parent's name and address: _____

_____

Former legal guardian's name and address: _____

_____

10 The judge will give you a free lawyer to help before and during the hearing. If you want the lawyer who represented you when you were a dependent, ward, or nonminor dependent, please write the lawyer's name and telephone number on the line below, and if that lawyer is available, the court will appoint him or her to help you before and during the hearing.

Name and telephone number of the lawyer who used to represent me and who I want to represent me again:

_____

_____

Your name: _____ **Case Number:**

11 Did you have a Court Appointed Special Advocate (CASA)?

☐ NO. I did not have a CASA.

☐ YES. I did have a CASA.

Would you like the CASA to be told about the hearing if the judge schedules a hearing?

☐ NO. I do not want the CASA to be told about the hearing.

☐ YES. I want the CASA to be told about the hearing. The name of the person who was my CASA is:

_____

12 Did the Indian Child Welfare Act apply to you when you were under juvenile court jurisdiction as a child?

a. ☐ NO. The Indian Child Welfare Act did not apply to me.

b. ☐ YES. The Indian Child Welfare Act did apply to me.

Would you like to have the Indian Child Welfare Act apply to you as a nonminor dependent?

(1) ☐ NO. I do not want the Indian Child Welfare Act to apply to me.

(2) ☐ YES. I do want the Indian Child Welfare Act to apply to me. The name of my tribe and the name, address, and telephone number of my tribal representative is: _____

_____

_____

c. ☐ I DO NOT KNOW if the Indian Child Welfare Act applied to me.

(1) ☐ I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.

Name of tribe(s) *(name each):*

Name of band *(if applicable):*

(2) ☐ I may have Indian ancestry.

Name of tribe(s) *(name each):*

Name of band *(if applicable):*

(3) ☐ I have no Indian ancestry as far as I know.

13 Your verification:

I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

14 Verification by nonminor's representative:
The nonminor is unable to provide verification due to a medical condition. I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS REGARDING PRIMA FACIE SHOWING ON NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Findings and Orders: Prima Facie Showing Made

1. The court has read and considered
   a. ☐ *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) filed by *(name):* on *(date):*
   b. ☐ Other *(specify):*
   c. ☐ Other *(specify):*

2. ☐ The court finds that a prima facie showing has been made that
   a. The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she was 18 years of age, based on an adjudication 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):*

Form Approved for Optional Use
Judicial Council of California
JV-470 [Rev. January 1, 2019]

Welfare and Institutions Code, §§ 388(e), 388.1;
Cal. Rules of Court, rule 5.906
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

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 21 years of age or older.

   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.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS AFTER HEARING TO CONSIDER NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

1. Parties *(name)*	Present	Attorney *(name):*	Present
a. Nonminor dependent:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐

2. Others present
   a. Other *(specify):*
   b. Other *(specify):*
   c. Other *(specify):*

3. **The court has read and considered and admits into evidence**
   a. ☐ report of social worker dated:
   b. ☐ report of probation officer dated:
   c. ☐ other *(specify):*
   d. ☐ other *(specify):*
   e. ☐ other *(specify):*

Court Grants Request

4. ☐ **The court makes the findings stated below:**
   a. Notice of the date, time, and location of the hearing was given as required by law.
   b. The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age ☐ and his or her adjudication was vacated under Penal Code section 236.14.
   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 is/are *(check all that apply):*
      (1) ☐ Attending high school or a high school equivalency certificate (GED) program

Form Approved for Optional Use
Judicial Council of California
JV-472 {Rev. January 1, 2019]

Welfare and Institutions Code, §§ 388(e), 388.1;
Cal. Rules of Court, rule 5.906
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

4. e. (2) ☐ Attending a college, community college, or vocational education program
   (3) ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment
   (4) ☐ Being employed for at least 80 hours per month
   (5) ☐ Unable to do any of the activities in e(1)–(4) due to a medical condition

   f. Continuing in a foster care placement is in the nonminor's best interest.

   g. The nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency.

   h. ☐ The nonminor, who is an Indian child, chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

5. ☐ The court makes the orders stated below:
   a. The court grants the request to 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*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	

FINDING AND ORDERS FOR CHILD APPROACHING MAJORITY—DELINQUENCY		CASE NUMBER:
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	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 adjudication is subject to vacatur under 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 adjudication 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:

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. ☐ 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.

   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 is not required. The facts supporting this finding were stated on the record.

4. ☐ For other than a dual status child:

   a. ☐ 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.

   b. ☐ 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.

   c. ☐ Reunification services ☐ have ☐ have not been terminated.

   d. ☐ The child's case ☐ has ☐ has not been set for a hearing to terminate parental rights or establish a guardianship.

   e. ☐ 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:

   a. ☐ The child plans to continue attending high school or a high school equivalency certificate (GED) program.

   b. ☐ The child plans to attend a college, community college, or vocational education program.

   c. ☐ The child plans to take part in a program or activities to promote employment or overcome barriers to employment.

   d. ☐ The child plans to be employed at least 80 hours a month.

   e. ☐ 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:

   a. ☐ is in the child's best interest.

   b. ☐ is not in the child's best interest because it is not necessary.

CHILD'S NAME:	CASE NUMBER:

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:

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 adjudication is subject to vacatur under Penal Code section 236.14.

a. Continuance 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 adjudication in petition number is vacated, the petition is dismissed, and the underlying arrest is expunged under 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 ☐ child welfare services department 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:

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:

b. ☐ Hearing to consider termination of jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the Callfornia Rules of Court

Hearing date:	Time:	Dept:	Room:

c. ☐ Other (*specify):*

Hearing date:	Time:	Dept:	Room:

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* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	

FINDINGS AND ORDERS AFTER HEARING TO MODIFY DELINQUENCY JURISDICTION TO TRANSITION JURISDICTION FOR CHILD YOUNGER THAN 18 YEARS OF AGE	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 adjudication and dismissal of the 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)*	Present	Attorney *(name):*	Present
a. Ward:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐
2. Parent			
a. *(Name):* ☐ Father ☐ Mother	☐		☐
b. *(Name):* ☐ Father ☐ Mother	☐		☐
3. Legal guardian *(name):*	☐		☐
4. Indian custodian *(name):*	☐		☐
5. Tribal representative *(name):*	☐		☐

6. ☐ Others present
   a. Other *(name):*
   b. Other *(name):*
   c. Other *(name):*

Form Approved for Optional Use
Judicial Council of California
JV-682 [Rev. January 1, 2019]

Welfare and Institutions Code, §§ 450, 451;
Cal. Rules of Court, rule 5.814
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

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 adjudication is subject to vacatur under Penal Code section 236.14, or ☐ 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.
   (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.

   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 on the record.

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:

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):*

a. ☐ The child plans to continue attending high school or a high school equivalency certificate (GED) program.

b. ☐ The child has made plans to attend a college, a community college, or a vocational education program.

c. ☐ The child plans to participate in a program or activities to promote employment or overcome barriers to employment.

d. ☐ The child has made plans to be employed at least 80 hours per month.

e. ☐ 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:

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 adjudication in petition number is vacated, the petition is dismissed, and the underlying arrest is expunged under 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 ☐ child welfare services department is responsible for the child's placement and care.

b. The child is adjudged a transition dependent under the transition jurisdiction of this court.

c. Delinquency jurisdiction is terminated.

d. *(Insert name):* ☐ continues his/her court appointment ☐ is appointed by the court as the attorney of record for the child.

e. 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:

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.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	

FINDINGS AND ORDERS AFTER HEARING TO MODIFY DELINQUENCY JURISDICTION TO TRANSITION JURISDICITON FOR WARD OLDER THAN 18 YEARS OF AGE	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

	Present	Attorney *(name):*	Present
1. Parties *(name)*			
a. Nonminor:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐
2. Parent			
a. *(Name):* ☐ Father ☐ Mother	☐		☐
b. *(Name):* ☐ Father ☐ Mother	☐		☐
3. Legal guardian *(name):*	☐		☐
4. Indian custodian *(name):*	☐		☐
5. Tribal representative *(name):*	☐		☐

6. ☐ Others present
   a. Other *(name):* *(Name):*
   b. Other *(name):* *(Name):*
   c. Other *(name):*

7. **The court has read and considered and admits into evidence**
   a. ☐ Report of social worker dated:
   b. ☐ Report of probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-683 [Rev. January 1, 2019]

Welfare and Institutions Code, §§ 450, 451;
Cal. Rules of Court, rule 5.813
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

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 an adjudication 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:

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 nonminor 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 adjudication in petition number is vacated, the petition is dismissed, and the underlying arrest is expunged under 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 ☐ child welfare services department is responsible for the nonminor'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:

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*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
REQUEST TO EXPUNGE ARREST OR VACATE ADJUDICATION (HUMAN TRAFFICKING VICTIM) (Penal Code, § 236.14)	CASE NUMBER: Date: Time: Department:

Instructions — Read Carefully

- Use this form if you were arrested and/or went to court for an offense 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 offense 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.
- Your request will be considered to be unopposed if an objection is not filed within 60 days from the file-stamped date on this 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 offense when you were a victim of human trafficking.
  - D. Fill out number 3 with information that describes how you were a victim of human trafficking. That information may, but does not need to, include information from police reports, delinquency petitions, or child welfare petitions. Check the box in 3 if you have documents to attach to this request.
  - E. If you have arrests or adjudications from different counties, for offenses 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 may 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 6 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 7.
  - H. You can ask the court for additional relief. If you want the court to take additional action, complete number 9.

1. **MY INFORMATION**

My name is:

I was born on *(date):*

My mailing address is:

CASE NAME:	CASE NUMBER:

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 of Petition	Court Case Number	Jurisdiction (City and/or County)	Disposition (City and/or County)	Offense (Crime) Committed

3. I committed the offense(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 offense 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 agency 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. Under Penal Code section 236.14, I am asking the court for additional relief. The action I want the court to take and the reason I want the court to take the action, is written below.

6. **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) for not wanting to attend and they are written below:

_____

_____

_____

b. ☐ I can appear at the hearing by telephone or videoconference.

7. **REQUEST FOR INTERPRETER**

☐ If there is a hearing, I will need a *(language)* _____ interpreter.

8. I request that the court dismiss the adjudication(s) and the related petition(s) in the cases listed in item 2 of this request.

9. 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 NAME OF PETITIONER) (SIGNATURE 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* **DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER AFTER REQUEST TO EXPUNGE ARREST OR VACATE ADJUDICATION (HUMAN TRAFFICKING VICTIM) (Penal Code, § 236.14)	CASE NUMBER: Date: Time: Department:

Based on the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds and orders as follows:

1. ☐ The applicant and/or counsel were personally present at the hearing, or appeared by phone or videoconference.
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 offense(s).
   - ☐ The applicant committed the offense because he or she was a human trafficking victim.
   - ☐ The applicant is making a good effort to distance himself 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 vacate the adjudication(s) and related disposition(s) and dismiss the petition(s) listed in the request. The court further orders the associated dispositions vacated.
5. The court ☐ grants ☐ denies the applicant's request to expunge the arrest(s) listed in the request.
6. a. ☐ The court grants the applicant's request for additional relief ☐ in whole ☐ in part and orders:

   b. ☐ The court denies the applicant's request for additional relief for the following reasons:

7. ***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 offense(s), and of the relief ordered by this court.

   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:

CASE NAME:	CASE NUMBER:

California Department of Justice
Law enforcement agency(ies) with jurisdiction over the offense(s) (*specify all*):

Law enforcement agency(ies) that arrested the applicant or participated in an arrest of the applicant (*specify all*):

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.

f. Any outstanding fines and fees associated with the vacated dispositions, other than restitution that directly benefits the victim, are set aside and discharged.

8. ☐ The request is denied without prejudice. The request is denied because the evidence presented did not show *(provide reasons for denial):*

9. ☐ The applicant is hereby granted a reasonable period of time to fix the problems noted in item 8 above.

10. ☐ The request is denied without prejudice pending a hearing. The hearing is scheduled for
(date): *(time):* in *(department):*

Date:

(JUDICIAL OFFICER)

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
1.	Alliance for Children's Rights by Nisha Kashyap	AM	We recommend that the five-year sunset provision proposed for petitions filed under Penal Code 236.14 be deleted. In its comments to the proposed rules and forms, the Judicial Council postulates: "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 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." We respectfully submit that this assumption fails to recognize the variety of crimes for which trafficking victims are routinely charged. The Judicial Council assumes that the main crime trafficking victims are arrested and/or adjudicated for is "prostitution, solicitation or loitering." However, in our experience, law enforcement arrests trafficking victims for many other crimes. An informal survey of	The committee appreciates these thoughtful comments and is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

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

	Commentator	Position	Comment	Committee Response
			cases in the Los Angeles County juvenile court that provides specialized services to survivors of sex trafficking suggests that as many as one-third of the youth were arrested and/or adjudicated for non-violent offenses directly related to their trafficking. This undercuts the Judicial Council's expectation that petitions against victims of human trafficking are rare. Moreover, our experience serving youth survivors of commercial sex trafficking has taught us that it often takes years for survivors to address the full ramifications of their trafficking. Many youth survivors of trafficking must first focus on overcoming significant obstacles to meeting their basic needs for stable housing, food, transportation, and personal safety before addressing the significant trauma associated with their trafficking. Additionally, youth who have endured serious trauma may take time to disclose details about their exploitation or may have difficulty engaging in supportive services for many years following the events. It would hinder the purpose and utility of the vacatur process to deny youth survivors access to the process once they are ready to rebuild their lives.	

	Commentator	Position	Comment	Committee Response
			Accordingly, we firmly believe that the Penal Code 236.14 petition process should not be subject to any sunset provision, but rather that the sealing of records option must be available in perpetuity. We respectfully request that the proposed sunset provision is deleted. Thank you for considering these comments when revising the forms implementing AB 604. We greatly appreciate this effort by the Judicial Council to provide additional clarification and support in filing Penal Code 236.14 petitions that provide critical new protections for youth survivors of commercial sexual exploitation in California.	
2.	Bay Area Legal Aid by Sabrina Forte, Project Coordinator, Youth Justice Project	AM	Bay Area Legal Aid (BayLegal) is committed to providing equal access to the civil justice system and high quality legal assistance throughout the Bay Area, regardless of a client's location, language or disability. BayLegal and its predecessor organizations have 50 years of experience providing expert civil legal assistance to low-income Bay Area individuals and families. We serve residents of Alameda, Contra Costa, Marin, Napa, San Francisco,	No response required.

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Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			San Mateo and Santa Clara counties with incomes at or below 200% of the Federal Poverty Level. BayLegal prioritizes its resources on serving the most underserved and vulnerable populations, including Limited English Proficient individuals and families, the disabled, immigrant victims of abuse, the formerly incarcerated, the LGBT community, and homeless and at-risk youth. We focus on five areas of law that most directly affect safety, stability and self-sufficiency: consumer law, domestic violence prevention, economic justice, health care access, and housing and homelessness prevention. BayLegal's Youth Justice Unit draws upon BayLegal's depth of substantive expertise to provide a unique model of civil legal advocacy for youth who are homeless or at extreme risk of homelessness, often due to aging out of the foster care system, justice system involvement, abuse and neglect, and/or trafficking. The Youth Justice Unit began in 2007 with one attorney fellow and has expanded to include ten attorneys and two social workers. Between 2014 and	

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	Commentator	Position	Comment	Committee Response
			2017, the Youth Justice Unit assisted 128 trafficked youth in over 200 distinct legal cases, including petitions for vacatur relief under Penal Code 236.14. In general, the forms and amended rules of court are accessible and provide young adults with clear guidance for obtaining vacatur relief while maintaining critical extended foster care benefits. We write only to comment on the provision that sunsets Rule 5.811 and forms JV-748 and JV-749 after five years. We do not think that five years is a sufficient time period for our clients to request vacatur. First, although the comments to the proposed rules and forms assume that, over time, the decriminalization of prostitution for minors will diminish the number of delinquency petitions filed against victims of human trafficking, that assumption is not supported by our experience working with exploited youth in the Bay Area. Though minor victims of human trafficking cannot face prosecution for prostitution or solicitation, they continue to be subject to delinquency petitions for "masking" charges, i.e., an allegation of theft or	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

	Commentator	Position	Comment	Committee Response
			disorderly conduct that is directly related to trafficking. Decriminalization does not prohibit juvenile probation departments from filing petitions based on these allegations, and in our experience, decriminalization has not stemmed the flow of these delinquency petitions. Nor are these youth generally diverted to the child welfare system, despite amendments to the Welfare and Institutions Code that clarify that failure to protect a child from exploitation is a basis for child welfare system involvement. A juvenile court judge in Alameda County recently remarked that, in the year following decriminalization, the county saw only one trafficking victim redirected to the dependency court, while the county's girls' court and Safety Net multi- disciplinary team continue to see new petitions against victims of trafficking for offenses that are directly related to their victimization. Although vacatur is available as an affirmative defense, it is infrequently raised, and so the victim may not learn about vacatur as a clean slate remedy until after they are dismissed from probation (often two or three years later). For the influx of young victims who are still facing	

	Commentator	Position	Comment	Committee Response
			delinquency petitions for non-violent offenses today, it will likely take more than five years for them to complete probation, demonstrate sufficient rehabilitation, and then pursue vacatur relief. Second, due to the complex personal and psychological dynamics of human trafficking, it may take several years for a human trafficking victim to identify as a victim. Others identify as a victim but have such severe post-traumatic stress disorder and need significant temporal distance before they can acknowledge their trafficking history. Placing a sunset date on the availability of vacatur relief may cause victims to be re-traumatized in an attempt to seek critical relief before they are ready to do so. For these reasons, we respectfully recommend deleting the sunset provision, to allow time for implementation and community education, and to maximize the number of trafficking victims who will be able to access this life-changing relief.	
3.	Bet Tzedek by Diego Cartagena, Vice President, Legal Programs	AM	Background Founded in 1974, the mission of Bet Tzedek (Hebrew for "House of Justice") is to act	No response required.

	Commentator	Position	Comment	Committee Response
			upon act upon a central tenant of Jewish law and tradition: "Tzedek, Tzedek, tirdof- justice, justice, you shall pursue." The doctrine establishes an obligation to advocate the just causes of the most vulnerable members of society. Consistent with this mandate, Bet Tzedek provides free legal assistance to eligible low- income residents of Los Angeles County, regardless of their racial, religious, or ethnic background. Bet Tzedek's Employment Rights Project litigates and advocates on behalf of human trafficking survivors-a form of modern day slavery, and one of the most severe violations of human and workers' rights. Among other things, we have fought to recover compensation for economic loss and suffering for our human trafficking survivor clients in both labor and sex trafficking cases. Many of our clients have had arrests or convictions that were a direct result of their being trafficked. This experience gives Bet Tzedek critical information about the real-life experiences of trafficking victims and how the revisions to the proposed forms implementing Penal	

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	Commentator	Position	Comment	Committee Response
			Code section 236.14will impact survivors of human trafficking, especially juveniles. We are also well aware of the disproportionately large number of crimes for which individuals are arrested or convicted solely as a result of their trafficking status. In a survey of its membership, the National Survivor Network reported that 40% of the respondents were arrested and/or convicted of crimes nine times or more while they were being trafficked. In New York, the state with the oldest vacatur law addressing human trafficking survivors, the Urban Institute documented that since the law was enacted in 2010, the state had vacated 1,598 convictions. Those convictions were imposed on the records of only 94 survivors. Survivors had an average of 21 convictions on their records, the fewest had one, while one client had 147.2 The frequency of arrest and conviction of trafficking survivors means that the process of clearing arrest records and vacating adult convictions and juvenile adjudications is a complex and time-consuming process for both advocates and survivors. It is thus	

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			essential that the Judicial Council present clear information and guidance for undertaking the process in the rules and forms it proposes to implement Section 236.14. The concrete suggestions we offer below are provided with firsthand knowledge of the complexities of arrests and/or criminal convictions in the human trafficking context. Overall Comments on Process/ Confidentiality	
			First, Bet Tzedek commends the Judicial Council for creating new forms to establish a uniform process for vacatur for minor victims of human trafficking. This type of relief, as well as continued access to extended foster care benefits, is essential for both sex and labor trafficking victims' ability to recover and rebuild their lives after a trafficking experience.	No response required.
			Bet Tzedek further agrees with the Council's assessment that the confidentiality provision already in place for juvenile proceedings is sufficient to protect the confidentiality concerns most survivors face and that no additional provisions are needed to protect	No response required.

	Commentator	Position	Comment	Committee Response
			the names of young people seeking to have their juvenile adjudications or arrests sealed. We understand that filing petitions under Section 236.14 is a difficult, traumatic, and re-triggering experience for survivors. Bet Tzedek thus commends the thoughtful, streamlined process the Council proposes to ensure that minors can access this new form of relief and maintain eligibility for extended foster benefits. However, Bet Tzedek is concerned about the impact of some of the proposed practices on the desire or ability of some survivors, particularly juveniles, to access the mandated relief. Accordingly, Bet Tzedek provides further comments and specific suggestions below to strengthen the proposed rules and forms. Sunset of Provisions Based on our experience working with human trafficking survivors and the complex systemic change that is needed to ensure that sex and labor trafficking survivors are no longer arrested or convicted of any crimes their traffickers force them to commit, we believe that the assumption underlying the Judicial Council 's suggested	No response required. As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

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	Commentator	Position	Comment	Committee Response
			five-year sunset provision for petitions to be filed under Section 236.14 is in error. We strongly recommend that the sunset provision should be deleted. In its comments to the proposed rules and forms, the Council speculates: "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 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." We respectfully submit that this assumption fails to recognize the variety of crimes for which trafficking victims are routinely charged. The Judicial Council assumes that the main crime for which trafficking victims are arrested and/or convicted is "prostitution, solicitation or loitering." Section 236.14, however, was expressly	

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			designed to allow for arrests and convictions to be vacated for all non-violent offenses, precisely because trafficking victims are arrested and convicted for a broad range of crimes undertaken under duress for their trafficker's benefit. A non-violent offense is any offense not listed in Penal Code section 667.5(C) (See PC section 236.14(t)(i) defining nonviolent offense.) The new rules and guidance proposed by the Judicial Council should consider the broad range of crimes covered by Section 236.14 in determining the propriety of a sunset provision. From our "on the ground" experience both before and after enactment of SB 1322, (Mitchell. Commercial sex acts: minors), we know that law enforcement often arrests trafficking victims for many crimes other than prostitution, solicitation, or loitering. While the prohibition against arresting trafficked minors for these crimes in California is a good start, it is just a first step in ensuring that all minors are properly screened by law enforcement and our juvenile delinquency system to make certain they receive services through the child dependency system rather than the criminal	

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			justice system. In our experience, both sex and labor trafficking victims are forced to commit a broad range of crimes by both their trafficker, and for their trafficker's benefit. These crimes range from forced stealing, drug cultivation or sales, identity theft or fraud, to truancy and other trafficking-related offenses. The complexities of this forced criminality common to so many trafficking victims is still not properly understood in California or nationally, and underscores the need for provisions like Section 236.14 to be accessible to child victims of trafficking for the foreseeable future. Supporting this ongoing experience is data from the National Survivor Network Survey (NSN) relating to juvenile arrests and convictions. The NSN is an organization whose only members are human trafficking survivors. It has representatives in over 37 states. A survey of its member respondents highlighted that 41.6% reported being arrested as minors. When asked about the specific nature of their arrests, although 65.3% respondents indicated they had been arrested for prostitution, 42.7% for solicitation, and 25.3% for intent to solicit,	

	Commentator	Position	Comment	Committee Response
			40% also reported being arrested for drug possession and 18.7% for drug sales. Moreover, fully 60% reported being arrested for other crimes. Based on these statistics, the NSN concluded that traffickers forced their victims to participate in a multitude of crimes in addition to prostitution, particularly drug sales and possession. A 2017 study of Covenant House clients in ten U.S. cities provides additional information showing that child labor or sex trafficking victims are likely to be arrested for crimes in addition to prostitution, solicitation and loitering. This runaway and homeless youth provider included Oakland and Los Angeles in its study, thus providing some data that is California-specific. The Covenant House report highlights that out of 270 youth respondents, 17% had been sex trafficked, 6% had been labor trafficked, and 20% had experienced both labor and sex trafficking. Interestingly, the data specific to Oakland showed a higher percentage of respondents trafficked for labor than for sex: 19% of youth respondents reported being labor trafficked in Oakland versus 15% for sex trafficking. The study further concluded:	

	Commentator	Position	Comment	Committee Response
			The vast majority (81%) of labor trafficking cases reported in this study were instances of forced drug dealing. Nearly 7% (42) of all youth interviewed had been forced into working in the drug trade. Forced drug dealing occurred through familial and cultural coercion as well as through the violence of suppliers and gangs.3 This data highlights that in California we have not even begun to address labor trafficking based on coerced drug dealing in our youth population, further evidencing the likely need for these youth to have access to sealing their records beyond the five years proposed by the Judicial Council. Finally, in our experience, because of the nature of the crimes and control by their traffickers, individuals often do not self-identify as victims. Some of them further believe they were actually complicit in criminal acts that their traffickers forced them to commit, while others continually lie about their trafficking experience to protect their trafficker. This is often especially the case with child victims. Even with the most extensive screening and training for law	

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			enforcement, and others involved in child delinquency and dependency proceedings, the dynamics and indicators of all forms of human trafficking are so complex and often hidden that these experts have a difficult time identifying victims. This means that the dynamic of the crime itself requires a system in place to correct errors that are likely to occur with this victim population, as was the designed purposed of Section 236.14. In conclusion, we are highly concerned about the Judicial Council's recommended sunset provision. We believe that extensive systemic change is needed so that child trafficking survivors are not arrested or/convicted of the multitude of crimes that traffickers force them to commit. It is our belief that the necessary changes will take far more than five years to be implemented. Based on our experience, we believe that the system may never identify all victims in a timely manner given the nature of trafficking dynamics. Accordingly, we firmly believe the Section 236.14 petition process should not be subject to any sunset provision, but rather the sealing of records option must be available in perpetuity.	

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			Proposed Form JV-748 We make the following suggestions and comments below about the Proposed Form JV-748. Inclusive Language and Simplicity of Forms First, we commend the Judicial Council for asking for specific comments and feedback on its proposed language and simplicity of its forms. We believe that identifying the petitioner as a "young person" is a sensitive and thoughtful choice by the Judicial Council to refer to this population. Many trafficking victims do not self-identify as victims and/or are too often pejoratively referred to as "defendants" in these types of proceedings. Using the phrase "young person" is both neutral and nonjudgmental. In reviewing the overall language of the forms, and the instructions to the forms, Bet Tzedek's assessment is that they are straightforward and easy to understand and thus "youth friendly." However, Bet Tzedek believes that in some places in the forms	No response required. No response required.

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	Commentator	Position	Comment	Committee Response
			misstate or fail to include the full requirements of the law, and therefore should be modified as suggested below. Evidence to Show Youth Was A Victim of Human Trafficking The instructions for the form Letter D appear to misstate the law in requiring a young person to use only police reports, delinquency petitions, or child welfare petitions to describe how the youth was a victim of human trafficking. Although these documents are permissible, they are not required. The proposed form should be clear that the youth can provide any evidence, including a declaration from the youth, relevant records, transcripts, or other documents to support the youth's claim that he or she was a victim of human trafficking. The form must be clear that "no official documentation" is required to support this claim, in accordance with the language of Section 236.14(m). In addition, SB 1322 (Commercial sex acts: minors), that went into effect in January 2017, mandates that no child can be arrested or convicted of solicitation, prostitution, or	The committee agrees the instruction in item D should be clarified. Item D will be revised to read: “Fill out number 3 with information that describes how you were a victim of human trafficking. That information may, but does not need to, include information from police reports and delinquency of child welfare petitions. Check the box in 3 if you have documents to attach to this request.”

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			loitering in California, (Penal Code sections 647(b) &(I) and 653.22). Accordingly, a youth with arrests or juvenile adjudications for any of these crimes should be considered a per se victim of human trafficking. The arrest record or judicial adjudication alone should be sufficient to prove the request for sealing the records. The proposed Judicial Council Instructions should provide clear instructions on the forms so that a youth understands that no additional evidence is required to support sealing of these records for these specific crimes. Request for Additional Action Court May Take The intent of the Legislature and the clear statutory language of Section 236.14(r) 4 allow a court granting relief pursuant to this section to take additional action as appropriate to carry out the purposes of this section. The availability of this additional relief is not included in the instructions to the proposed form; thus, the youth does not know that he or she may make a specific request for it. We propose the following	As it was circulated for comment, form JV-748 allows the court to grant the applicant's request without a hearing. As such, if the court finds that documentation of arrests or adjudications for the crimes noted by the commenter sufficient to meet the statutory standard, it may grant the request without a hearing. Since the form already allows for the relief suggested by the commenter, the committee declines to change the form. The committee agrees to include an additional instruction that states: "You may ask the court to take additional action. If you want the court take additional action, complete number 9." In addition to this instruction, item number 9 will be added to form JV-748. Item number 9 will read: "Under Penal Code section 236.14, I am asking the court for additional relief. The action I want the court to take and the reason I

	Commentator	Position	Comment	Committee Response
			clarifying language be included in the instructions and on the proposed form to ensure the youth better understand that additional relief is available but must be specifically requested. Request to Return Fines and Fees Under Section 236.14, petitioners are allowed to apply for relief even if they have not completed the terms of probation or paid outstanding fines or fees associated with the conviction. Many trafficking survivors have spent years trying to pay the fines and fees from their wrongful conviction. If the conviction is vacated, petitioners should be able to explicitly request a return of these fines and fees by the court except as is clarified in Section 236.14(i), "financial restitution ordered that benefited the victim of a nonviolent crime." A question on the proposed form should clarify to the court if the petitioner is (1) requesting the return of any fines or fees paid to the court and (2) the amount paid, if known. Proposed Order JV-749 Section 236.14 (d) makes clear that a	want the court to take the action, is written below:" While the committee understands the basis of this request, Penal Code section 23.14 does not state that paid fines and fees should be reimbursed. In the absence of statutory language authorizing reimbursement for fines and fees already paid, it is beyond the Judicial Council's purview to require such an order. Even where the purpose of legislation is to repeal certain fees, as in Senate Bill 190 ([Mitchell]; Stats. 2017, ch. 678), the court cannot order reimbursement of already paid fines and fees, in the absence of an explicit authorization. The committee agrees to revise form JV-749 to state that outstanding fines and fees related to dispositions that are vacated will be set aside and discharged. The committee agrees that instruction item F

	Commentator	Position	Comment	Committee Response
			request can be granted by a Court without a hearing. This provision is an important provision of Section 236.14, as it can save the victim being re-traumatized by having to appear in court. Therefore, Item 1 of the proposed order should be updated to state that the order to vacate arrest or adjudication is granted without a hearing.	should be revised to state that the court "may" set a hearing. Section 236.14(d) authorizes the court to grant an unopposed petition without a hearing; however, 236.14(f) states that the court must set a hearing if there is opposition to the request or if the court deems it necessary. Furthermore, form JV-749 includes a waiver of appearance and an option for the applicant to appear by phone.
			Further, trafficking victims who are minors may still be on probation when the order for sealing is granted. To ensure that probation is efficiently terminated, the order should expressly state that the appropriate probation program must be notified and probation terminated.	The committee agrees that form JV-749 needs clarification. To make it clear that the disposition must also be vacated, number 4 on form JV-749 will be revised as follows: "The court [] grants [] denies the applicant's request to dismiss the adjudication(s) and related petition(s) listed in the request. The court further orders the associated disposition(s) be vacated.
			The court should also have space on the order form to specifically order the return of all fines and fees associated with the adjudications in the petition.	As stated above, PC 236.14 does not state that fees and fines should be reimbursed.
			Process For Consolidating Petitions From Multiple Jurisdictions	As stated by the commenter, the directions section of form JV-748 states that the court is

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	Commentator	Position	Comment	Committee Response
			We are concerned about the limited, and in some cases, complete lack of guidance that the Judicial Council provides for applicants about (1) the requirement to serve this form and (2) how the arrests and adjudications will be properly consolidated. Noting that human trafficking commonly leads to multiple arrests and convictions across the state, the Legislature directed the courts to provide a streamlined process that would save the courts both time and money and avoid re-traumatization of human trafficking victims.	to serve the application, unless the applicant is represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff. Consolidation of the petitions is also addressed in the directions section of form JV-748; however, the committee will modify the form to clarify that the hearing will take place in the county where the application for relief is filed.
			We applaud the Judicial Council in its instructions to form JV-748 that in the case of a petitioner without counsel, the court takes on responsibility to serve this form. However, in cases where an applicant has an attorney, the responsibility is then transferred back to the petitioner. We urge the Judicial Council to make this process uniform for all applicants, even those with counsel, by directing the court to undertake service in all cases and to coordinate the consolidation of the petitions.	As stated by the commenter, the directions section of form JV-748 states that the court is to serve the application, unless the applicant is represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff.
			If the Judicial Council continues the policy	The committee agrees that it would be

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	Commentator	Position	Comment	Committee Response
			of requiring petitioners with counsel to be responsible for service, then the Council should propose additional guidance and support for this process. For example, we recommend updating form JV-748 and other Judicial Council forms to provide clearer instructions to the applicant to serve the involved parties, certify this service, and clarify the date on which the court can deem the petition unopposed. Further, we suggest that the Judicial Council provide a sample stipulation that the petitioner can provide to prosecution and law enforcement agencies at the same time as service of the petition to further simplify the process of consolidating the petitions. If additional outreach is needed by the courts to secure court acceptance of the responsibility, then the court should have clear instructions on how to conduct this outreach. Coordination with the court by petitioner, a survivor of human trafficking and/or his or her likely pro bono or nonprofit legal service provider, will likely not be efficient or possible for counsel to secure in a timely manner. Given the complexities of this process and the likely need to coordinate in both adult	beneficial to include the date on which the petition may be deemed unopposed. The statute states that the petition may be considered unopposed if an opposition is not filed within 45 days of receipt of the application. To account for services by mail, the applicant may put a date that is 60 days from the date of filing. Form JV-748 will be revised to include a place to include the date.

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	Commentator	Position	Comment	Committee Response
			and juvenile matters, we suggest that Judicial Council host a roundtable of practitioners to seek further input into this matter.	
4.	California Lawyers Association	AM	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal in general, but also has the following comments. a. INFO JV-464 We believe it needs an offset and/or "or" between the 2nd and 3rd bullet points immediately under "Court Jurisdiction Requirements" on page 1. Without that change, it is likely to confuse an otherwise eligible youth who wants to enter extended foster care but was never a delinquent. b. JV-466 We believe the applicability of Penal Code section 236.14 in #4 b should be made optional. The form is asking for something that may not be applicable. As proposed, a youth who was not a delinquent might be discouraged into thinking that the form must not apply to him or her since there was no underlying conviction. Use of an optional checkbox or inserting an "or" after a. would	No response required. The committee agrees that inserting "or" between the bullet points would eliminate any confusion and will revise the form accordingly. The committee agrees that number 4 on form JV-466 could be misleading and will insert a checkbox in front of 4b.

	Commentator	Position	Comment	Committee Response
			probably suffice. Inserting something like "if applicable" is another option to fix this issue. (Notably, the subsequent amended forms appropriately employ "or" and check boxes to differentiate Penal Code section 236.14 vacatur cases from other situations giving rise to foster care or other out-of-home placements during transition to majority.)	
			c. Rule 5.903 In attempting to make clear the disallowance of the DA from proceedings following dismissal of delinquency jurisdiction after Penal Code section 236.14 vacatur, it uses the phrase "must not". Since a DA is not permitted to attend such hearings, we believe that instead of "must not" the rule should say that the DA "is not permitted to appear…"	The committee agrees with the proposed modification and will revise the form accordingly.
			d. Request for Specific Comments The Invitation to Comment requests comments on whether referring to nonminor dependents as "young people" is appropriate. Nonminor dependents probably would not object to that language, and referring to them as "youth" might be preferable to them. However, there seems to	No response required.

	Commentator	Position	Comment	Committee Response
			be consternation amongst those serving such young people over their status as "adults," so "youth" might be too controversial to them (not the nonminor dependents themselves). In short, "young people" is accurate and non-pejorative, and we believe it is appropriate. The Invitation to Comment requests feedback about the adequacy of the 5-year sunset provision under rule 5.811. While 5 years sounds like it should be more than enough time, practice changes often trail changes to the law, so 7 years might be better. The worst-case scenario is that after 5 years no single case statewide would require application of Penal Code section 236.14 and the option would stand on the books unused for a couple of years. Worse yet would be some jurisdiction that loses institutional knowledge and reverts without a remedy. For that matter, no sunset provision might be better still.	As stated above, the committee is persuaded by the arguments that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
5.	Children's Law Center by Leslie Heimov, Executive Director and Julie McCormick, Policy Associate	AM	By way of background, CLC is a nonprofit legal services organization that serves as the voice for dependent children and youth in the foster care system. Our committed attorneys and other professional staff represent over 33,000 abused and neglected	No response required.

	Commentator	Position	Comment	Committee Response
			children in the Los Angeles, Sacramento and Placer County foster care systems. Through our daily work, we have seen firsthand the challenges facing sexually exploited youth. This experience gives CLC critical information about the real-life experiences of trafficking victims and how the revisions to the proposed forms implementing PC 236.14 will impact survivors of human trafficking, especially juveniles. From our experience working with trafficking victims, we are also well aware of the disproportionately large number of crimes for which individuals are arrested or convicted solely as a result of their trafficking status. In a survey of its membership, the National Survivor Network, reports that 40% of the respondents were arrested and/ or convicted of crimes 9 times or more while they were being trafficked. In New York, the state with the oldest vacatur law addressing human trafficking survivors, the Urban Institute documented	

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Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			that since the law was enacted in 2010, the state had vacated 1,598 convictions. Those convictions were imposed on the records of only 94 survivors. Survivors had an average of 21 convictions on their records, the fewest had one, while one client had 147. The frequency of arrest and conviction of trafficking survivors means that the process of clearing arrest records and vacating adult convictions and juvenile adjudications is a complex and time consuming process for both advocates and survivors. It is thus essential that the Judicial Council present clear information and guidance for undertaking the process in the rules and forms it proposes to implement PC 236.14. The concrete suggestions we offer below are provided with firsthand knowledge of the complexities of arrests and/or criminal convictions in the human trafficking context. Overall Comments on Process/ Confidentiality First, we would like to commend the Judicial Council for creating new forms to establish a uniform process for vacatur for	

	Commentator	Position	Comment	Committee Response
			minor victims of human trafficking. This form of relief, as well as continued access to extended foster care benefits, is essential for both sex and labor trafficking victims' ability to recover and rebuild their lives after a trafficking experience. We also agree with the Council's assessment that the confidentiality provision already in place for juvenile proceedings is sufficient to protect the confidentiality concerns most survivors face and that no additional provisions are needed to protect the names of the young person seeking to have their juvenile adjudications or arrests sealed. In our experience, filing petitions under PC 236.14 is a difficult, traumatic, and re-triggering experience for survivors. We thus commend the thoughtful, streamlined process the Council proposes to ensure that minors can access this new form of relief and maintain eligibility for extended foster benefits. However, we are concerned about the impact of some of the proposed practices on the desire or ability of some survivors, particularly juveniles, to access the mandated relief. Accordingly, below, we provide further comments and specific suggestions to strengthen the proposed rules and forms.	

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	Commentator	Position	Comment	Committee Response
			Sunset of Provisions Based on our experience working with human trafficking survivors and the complex systemic change that is needed to ensure that sex and labor trafficking survivors are no longer arrested or convicted of any crimes their traffickers force them to commit, we believe that the assumption underlying the Judicial Council's suggested 5-year sunset provision for petitions to be filed under PC 236.14 is in error. We strongly recommend that the sunset provision be deleted. In its comments to the proposed rules and forms, the Council speculates: "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 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	As stated above, the committee is persuaded by the arguments that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

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

	Commentator	Position	Comment	Committee Response
			eligible for vacatur to petition for that relief." We respectfully submit that this assumption fails to recognize the variety of crimes for which trafficking victims are routinely charged. The Judicial Council assumes that the main crime trafficking victims are arrested and/or convicted of is "prostitution, solicitation or loitering". "PC 236.14, however, was expressly designed to allow for arrests and convictions to be vacated for all non-violent offenses, precisely because trafficking victims are arrested and convicted for a broad range of crimes undertaken. under duress for their trafficker's benefit. A non-violent offense is any offense not listed in CA Penal Code 667.5(C) (See PC 236.14(t)(i) defining nonviolent offense.) The new rules and guidance proposed by the Judicial Council should consider the broad range of crimes covered by PC 236.14in determining the propriety of a sunset provision. Form our "on the ground" experience both before and after enactment of SB 1322, (Mitchell. Commercial sex acts: minors),	

	Commentator	Position	Comment	Committee Response
			law enforcement often arrests trafficking victims for many crimes other than prostitution, solicitation or loitering. While the prohibition against arresting trafficked minors for these crimes in California is a good start, it is just a first step in ensuring that all minors are properly screened by law enforcement and our juvenile delinquency system to make certain they receive services through the child dependency system rather than the criminal justice system. In our experience, both sex and labor trafficking victims are forced to commit a broad range of crimes by their trafficker and for their trafficker's benefit. These range from forced stealing, drug cultivation or sales, identity theft or fraud, truancy, and other trafficking-related offenses. The complexities of this forced criminality common to so many trafficking victims is still not properly understood in California or nationally and underscores the need for provisions like PC 236.14 to be accessible to child victims of trafficking for the foreseeable future. Supporting this ongoing experience is data from the National Survivor Network Survey (NSN) relating to juvenile arrests and convictions. The NSN is an organization	

	Commentator	Position	Comment	Committee Response
			whose only members are human trafficking survivors. It has representatives in over 37 states. A survey of its member respondents highlighted that 41.6% reported being arrested as minors. When asked about the specific nature of their arrests, although 65.3% respondents indicated they had been arrested for prostitution, 42.7% for solicitation, and 25.3% for intent to solicit, 40% also reported being arrested for drug possession and 18.7% for drug sales. Moreover, fully 60% reported being arrested for other crimes. Based on these statistics, the NSN concluded that traffickers forced their victims to participate in a multitude of crimes in addition to prostitution, particularly drug sales and possession. A 2017 study of 10 cities in the United States of Covenant House clients, a runway and homeless youth provider, provides additional information showing that child labor or sex trafficking victims are likely to be arrested for crimes in addition to prostitution, solicitation and loitering. Oakland and Los Angeles were included in the study, thus providing some data that is California specific. The Covenant House report highlights that out of 270 youth	

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			respondents, 17% had been sex trafficked,6% had been labor trafficked, and 20% had experienced both labor and sex trafficking. Interestingly, the data specific to Oakland showed a higher percentage of respondents trafficked for labor than for sex: 19% of youth respondents reported being labor trafficked in Oakland versus 15% for sex trafficking. The study further concluded that: The vast majority (81%) of labor trafficking cases reported in this study were instances of forced drug dealing. Nearly 7% (42) of all youth interviewed had been forced into working in the drug trade. Forced drug dealing occurred through familial and cultural coercion as well as through the violence of suppliers and gangs. This data highlights that in California we have not even begun to address labor trafficking based on coerced drug dealing in our youth population further evidencing the likely need for these youth to have access to sealing their records beyond the five years proposed by the Judicial Council. Finally, in our experience, because of the nature of the crimes and control by their	

	Commentator	Position	Comment	Committee Response
			traffickers, individuals often do not self-identify as victims. Some of them further believe they were actually complicit in criminal acts that their traffickers forced them to commit, while others continually lie about their trafficking experience to protect their trafficker. This is often especially the case with child victims. Even with the most extensive screening and training for law enforcement, and others involved in child delinquency and dependency proceedings, the dynamics and indicators of all forms of human trafficking are so complex and often hidden that these experts have a difficult time identifying victims. This means that the dynamic of the crime itself requires a system in place to correct errors that are likely to occur with this victim population as was the designed purposed of PC 236.14. In conclusion, we are highly concerned about the Judicial Council's recommended sunset provision we believe that extensive systemic change is needed so that child trafficking survivors are not arrested or/convicted of the multitude of crimes that traffickers force them to commit. It is our belief that the necessary changes will take far more than five years to be implemented.	

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Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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			Based on our experience, we believe that the system may never identify all victims in a timely manner given the nature of trafficking dynamics. Accordingly, we firmly believe the PC 236.14 petition process should not be subject to any sunset provision, but rather the sealing of records option must be available in perpetuity. Suggested Language: Strike the following: Sunset Provision Conduct of the hearing (1) Unless amended or reenacted by Judicial Council action effective after the effective date of this rule, this rule is repealed effective January 1, 2020. Proposed Form JV-748 We make the following suggestions and comments below about the Proposed Form JV-748. Inclusive Language and Simplicity of Forms We commend the Judicial Council for	No response required.

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

	Commentator	Position	Comment	Committee Response
			asking for specific comments and feedback on its proposed language and simplicity of its forms. We believe that identifying the petitioner as a “young person” is a sensitive and thoughtful choice by the Judicial Council to refer to this population. Many trafficking victims do not self-identify as victims and/or are too often pejoratively referred to as "defendants" in these types of proceedings. Using the phrase “young person” is both neutral and nonjudgmental. In reviewing the overall language of the forms, and the instructions to the forms, CLC's assessment is that it is straight-forward and easy to understand and thus "youth friendly”. However, CLC believes that in some places the forms misstate or fail to include the full requirements of the law and should be modified as suggested below. Evidence to Show Youth Was A Victim of Human Trafficking The instructions for the form Letter D	The committee agrees the instruction in item D should be clarified. Item D will be revised to read: “Fill out number 3 with information that describes how you were a victim of

	Commentator	Position	Comment	Committee Response
			appears to misstate the law in requiring a young person to use only police reports, delinquency petitions, or child welfare petitions to describe how the youth was a victim of human trafficking. Although these documents are permissible, they are not required. The proposed form should be clear that the youth can provide any evidence, including a declaration from the youth, relevant records, transcripts, or other documents to support the youth's claim that he or she was a victim of human trafficking. The form must be clear that "no official documentation" is required to support this claim in accordance with the language of PC 236.14(m).	human trafficking. That information may, but does not need to, include information from police reports and delinquency of child welfare petitions. Check the box in 3 if you have documents to attach to this request."
			In addition, SB 1322 (Commercial sex acts: minors), that went into effect in January 2017, mandates that no child can be arrested or convicted of solicitation, prostitution or loitering in California, (PC 647(b) & (l) and 653.22). Accordingly, a youth with arrests or juvenile adjudications for any of these crimes should be considered a per se victim of human trafficking. The arrest record or judicial adjudication alone should be sufficient to prove the request for sealing the records. The proposed Judicial Council	As it was circulated for comment, form JV-748 allows the court to grant the applicant's request without a hearing. As such, if the court finds that documentation of arrests or adjudications for the crimes noted by the commenter sufficient to meet the statutory standard, it may grant the request without a hearing. Since the form already allows for the relief suggested by the commenter, the committee declines to change the form.

	Commentator	Position	Comment	Committee Response
			Instructions should provide clear instructions on the forms so that a youth understands that no additional evidence is required to support sealing of these records for these specific crimes. Suggested Language: 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 box three if you have police reports or petitions to attach to this request. Be aware that no official documentation is needed to show that you were a victim of human trafficking. A Court can consider other evidence such as statements from you about your experience or other information you may have to show you were a victim of human trafficking. If you were arrested or convicted of PC 647(b), (l) and 653.22 be aware that you do not have to provide any additional information unless you have other arrests and convictions you also hope to have removed from your record. **1.** Add: I have attached other information	The language in D will be revised as set forth above.

	Commentator	Position	Comment	Committee Response
			such as my own statement that describes how I was a victim of human trafficking and that the crime(s) committed was a direct result of my being a victim. Request for Additional Action Court May Take The intent of the legislature and the clear statutory language of section 236.14 (r) allows a court granting relief pursuant to this section to take additional action as appropriate to carry out the purposes of this section. The availability of this additional relief is not included in the instructions to the proposed form, thus, the youth does not know that he or she may make a specific request for it. We propose the following clarifying language be included in the instructions and on the proposed form to ensure a better understanding by youth that additional relief is available but must be specifically requested. Suggested Language: Insert in the instructions Letter H as follows: H. The Court is allowed to take additional action as appropriate to carry out	The committee agrees to include an additional instruction that states: "You may ask the court to take additional action. If you want the court take additional action, complete number 9." In addition to this instruction, item number 9 will be added to form JV-748. Item number 9 will read: "Under Penal Code section 236.14, I am asking the court for additional relief. The action I want the court to take and the reason I want the court to take the action, is written below:"

	Commentator	Position	Comment	Committee Response
			the purposes of this relief. Are you asking for any additional relief from this court? Yes No If yes, describe this request and provide supporting documentation as needed. If necessary attach additional pages. Request to Return Fines and Fees Under PC 236.14, petitioners are allowed to apply for relief even if they have not completed the terms of probation or paid outstanding fines or fees. Many trafficking victims have spent years trying to pay the fines and fees ordered. If the delinquency petition is sealed under PC 236.14,a youth should be able to explicitly request a return of these fines and fees by the court unless, as provided in Section 236.14(i), it "is financial restitution ordered that benefited the victim of a nonviolent crime." A question on the Judicial Council proposed form should clarify to the court if the petitioner is (1) requesting the return of any fines or fees paid to the court and (2) the amount paid, if known.	While the committee understands the basis of this request, Penal Code section 23.14 does not state that paid fines and fees should be reimbursed. In the absence of statutory language authorizing reimbursement for fines and fees already paid, it is beyond the court's purview to make such an order. Even where the purpose of legislation is to repeal certain fees, as in Senate Bill 190, in the absence of an explicit authorization, the court cannot order reimbursement of already paid fines and fees. The committee agrees to revise form JV-749 to state that outstanding fines and fees related to dispositions that are vacated will be set aside and discharged.

	Commentator	Position	Comment	Committee Response
			Suggested Language: Insert in Instructions to the form Letter I as follows: I. The Court is allowed to return any fines and fees you paid as a result of your delinquency adjudication. Please let the Court know if you have paid any fines and fees and the amount if known. 7. I am requesting the court return fines and fees paid as a term of my delinquency adjudication. Yes/No I request the return in the amount (Insert if Known) Proposed Order JV-749 PC 236.14 (d) makes clear that a request can be granted by a Court without a hearing.6 This provision is an important provision of PC 236.14 as it can save the victim being re-traumatized by having to appear in court. Therefore, Question 1 of the proposed order should be updated to state that the order to vacate arrest or adjudication can be granted without a hearing if it is uncontested and the court makes the decision not to hold a	Section 236.14(d) authorizes the court to grant an unopposed petition without a hearing; however, 236.14(f) states that the court must set a hearing if there is opposition to the request or if the court deems it necessary. Furthermore, form JV-749 includes a waiver of appearance and an option for the applicant to appear by phone. However, the committee agrees that instruction item F should be revised to state that the court "may"

	Commentator	Position	Comment	Committee Response
			hearing. Suggested Language: (1) The Applicant and/or counsel were personally present at the hearing, or appeared by phone or video conference or The court determined the matter without a hearing as allowed under 236.14(d)	set a hearing.
			Further, trafficking victims who are minors may still be on probation when the order for sealing is granted. To ensure that probation is efficiently terminated, the order should expressly state that the appropriate probation program must be notified and probation terminated. Suggested Language: Insert the following language at 6(f): Any and all terms of probation are hereby terminated for the adjudications listed in the petition and the appropriate probation programs are notified that probation should be terminated as of (INSERT DATE) The court should also have space on the	The committee agrees that form JV-749 needs clarification. To make it clear that the disposition must also be vacated, number 4 on form JV-749 will be revised as follows: "The court [] grants [] denies the applicant's request to dismiss the adjudication(s) and related petition(s) listed in the request. The court further orders the associated disposition(s) be vacated.

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			order form to specifically order the return of all fines and fees associated with the adjudications in the petition. Suggested Language: Change number 7 to 8. Insert as number 7 the following language: 7. The Court orders the return of fines and fees for the adjudications listed in the petition in the amount of (INSERT AMOUNT) JV-464-INFO Suggested Language: Page 1 under Court Jurisdiction Requirements add “OR” after “your case was vacated (Penal Code section 236.14). JV-472 Suggested Language Page 1, #4.b. – change “or” to “and” at the end of the sentence. JV-682	The committee agrees to modify form JV-464 as suggested. To clarify 4b. on form JV-472, the committee will include a checkbox in front of it.

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

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			Question about current language Page 2, #9.a.(1) - if the youth meets this component then the youth would not need to also meet the requirement under subpart (4), correct? So should there be an "OR" after subpart (1) with the subpart (4) language to follow immediately after? Process For Consolidating Petitions From Multiple Jurisdictions We are concerned about the limited, and in some cases, complete lack of guidance that the Judicial Council provides for applicants about (1) the requirement to serve this form and (2) how the arrests and adjudications will be properly consolidated. Noting that human trafficking commonly leads to multiple arrests and convictions across the state, the legislature directed the courts to provide a streamlined process that would save the courts both time and money and avoid re-traumatization of human trafficking victims. We applaud the Judicial Council in its instructions to form JV-748 that in the case	The form will be revised accordingly. As noted by the commenter, the directions section of form JV-748 states that the court is to serve the application, unless the applicant is represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff. Consolidation of the petitions is also addressed in the directions section of form JV-748; however, the committee will modify the form to clarify that the hearing will take place in the county where the application for relief is filed.

	Commentator	Position	Comment	Committee Response
			of a petitioner without counsel the court takes on responsibility to serve this form. However, in cases where an applicant has an attorney, the responsibility is then transferred back to the petitioner. We urge the Judicial Council to make this process uniform for all applicants, even those with counsel, by directing the court to undertake service in all cases and to coordinate the consolidation of the petitions. If the Judicial Council continues the policy of requiring petitioners with counsel to be responsible for service, than additional guidance and support for this process should be proposed by the Council. For example, we recommend updating form JV-748 and other Judicial Council forms to provide clearer instructions to the applicant to serve the involved parties, certify this service, and to clarify the date on which the court can deem the petition unopposed. Further, we suggest that the Judicial Council provide a sample stipulation that can be provided by the petitioner to prosecution and law enforcement agencies at the same time of service of the petition to further simplify the process of consolidating the petitions. If additional outreach is needed by the courts	As stated by the commenter, the directions section of form JV-748 states that the court is to serve the application, unless the applicant is represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff.

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			to secure court acceptance of the responsibility, then the court should have clear instructions on how to conduct this outreach. Coordination with the court by petitioner, a survivor of human trafficking and/or his or her likely pro bono or nonprofit legal service provider, will likely not be efficient or possible for counsel to secure in a timely manner. Given the complexities of this process and the likely need to coordinate in both adult and juvenile matters we suggest that Judicial Council host a round table of practitioners to seek further input into this matter.	
6.	Coalition to Abolish Slavery & Trafficking (CAST) by Kay Buck, Executive Director	AM	CAST was involved in drafting SB 823, the bill that became Penal Code 236.14. Since it came into effect in January 2017, CAST has actively pursued relief for its clients under this section, successfully obtaining petitions for relief from arrest and conviction records for human trafficking victims. This experience gives CAST critical information about the real-life experiences of trafficking victims and how the revisions to	No response required.

	Commentator	Position	Comment	Committee Response
			the proposed forms implementing PC 236.14 will impact survivors of human trafficking, especially juveniles. From its experience working with trafficking victims, CAST is also well aware of the disproportionately large number of crimes for which individuals are arrested or convicted solely as a result of their trafficking status. In a survey of its membership, the National Survivor Network, a CAST-hosted project, reports that 40% of the respondents were arrested and/ or convicted of crimes 9 times or more while they were being trafficked. In New York, the state with the oldest vacatur law addressing human trafficking survivors, the Urban Institute documented that since the law was enacted in 2010, the state had vacated 1,598 convictions. Those convictions were imposed on the records of only 94 survivors. Survivors had an average of 21 convictions on their records, the fewest had one, while one client had 147. CAST's own data from a survey of arrest and conviction records of 65 of its clients found that human trafficking victims are arrested seven times more frequently for	

	Commentator	Position	Comment	Committee Response
			activity directly related to their trafficking than for non-trafficking activity. Victims are often detained by well-intentioned officers seeking to remove them from the streets and from the control of their traffickers. Sadly, the records show that some victims had been arrested 30 or 40 times in only a few years under the control of their traffickers. The frequency of arrest and conviction of trafficking survivors means that the process of clearing arrest records and vacating adult convictions and juvenile adjudications is a complex and time consuming process for both advocates and survivors. It is thus essential that the Judicial Council present clear information and guidance for undertaking the process in the rules and forms it proposes to implement PC 236.14. The concrete suggestions CAST offers below are provided with firsthand knowledge of the complexities of arrests and/or criminal convictions in the human trafficking context. CAST hopes that the Judicial Council will recognize our extensive experience in the area and adopt our suggestions. Overall Comments on Process/	

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			Confidentiality First, CAST would like to commend the Judicial Council for creating new forms to establish a uniform process for vacatur for minor victims of human trafficking. This form of relief, as well as continued access to extended foster care benefits, is essential for both sex and labor trafficking victims' ability to recover and rebuild their lives after a trafficking experience. CAST further agrees with the Council's assessment that the confidentiality provisions already in place for juvenile proceedings is sufficient to protect the confidentiality concerns most survivors face and that no additional provisions are needed to protect the names of the young person seeking to have their juvenile adjudications or arrests sealed. In CAST's experience, filing petitions under PC 236.14 is a difficult, traumatic, and re-triggering experience for survivors. CAST thus commends the thoughtful, streamlined process the Council proposes to ensure that minors can access this new form of relief and maintain eligibility for extended foster benefits. However, CAST is concerned about the impact of some of the proposed practices on the ability of some survivors,	No response required.

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			particularly juveniles, to access the mandated relief. Accordingly, below, CAST is providing further comments and specific suggestions to strengthen the proposed rules and forms. Sunset of Provisions Based on CAST's experience working with human trafficking survivors and the complex systemic change that is needed to ensure that sex and labor trafficking survivors are no longer arrested or convicted of any crimes their traffickers force them to commit, CAST believes that the assumption underlying the Judicial Council's suggested 5-year sunset provision for petitions to be filed under PC 236.14 is in error. CAST strongly recommends that the sunset provision be deleted. In its comments to the proposed rules and forms, the Council speculates: "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	As stated above, the committee is persuaded by the arguments that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

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			forward there will be only rare circumstances 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." CAST respectfully submits that this assumption fails to recognize the variety of crimes for which trafficking victims are routinely charged. The Judicial Council assumes that the main crime trafficking victims are arrested and/or convicted of is prostitution, solicitation or loitering. PC 236.14, however, was expressly designed to allow for arrests and convictions to be vacated for all non-violent offenses, precisely because trafficking victims are arrested and convicted for a broad range of crimes undertaken under duress for their trafficker's benefit. A non-violent offense is any offense not listed in CA Penal Code 667.5(C)(See PC 236.14(t)(i) defining nonviolent offense.) The new rules and guidance proposed by the Judicial Council should consider the broad range of crimes covered by PC 236.14 in determining the propriety of a sunset provision.	

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			From CAST's on the ground experience both before and after enactment of SB 1322, (Mitchell. Commercial sex acts: minors), law enforcement often arrests trafficking victims for many crimes other than prostitution, solicitation or loitering. While the prohibition against arresting trafficked minors for these crimes in California is a good start, it is just a first step in ensuring that all minors are properly screened by law enforcement and our juvenile delinquency system to make certain they receive services through the child dependency system rather than the criminal justice system. In our experience, both sex and labor trafficking victims are forced to commit a broad range of crimes by their trafficker and for their trafficker's benefit. These range from forced stealing, drug cultivation or sales, identity theft or fraud, truancy, and other trafficking-related offenses. The complexities of this forced criminality common to so many trafficking victims is still not properly understood in California or nationally and underscores the need for provisions like PC 236.14 to be accessible to child victims of trafficking for the foreseeable future.	

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			Supporting CAST's ongoing experience is data from the National Survivor Network Survey (NSN) relating to juvenile arrests and convictions. The NSN is an organization whose only members are human trafficking survivors. It has representatives in over 37 states. A survey of its member respondents highlighted that 41.6% reported being arrested as minors. When asked about the specific nature of their arrests, although 65.3% respondents indicated they had been arrested for prostitution, 42.7% for solicitation, and 25.3% for intent to solicit, 40% also reported being arrested for drug possession and 18.7% for drug sales. Moreover, fully 60% reported being arrested for other crimes. Based on these statistics, the NSN concluded that traffickers forced their victims to participate in a multitude of crimes in addition to prostitution, particularly drug sales and possession. A 2017 study of 10 cities in the United States of Covenant House clients, a runway and homeless youth provider, provides additional information showing that child labor or sex trafficking victims are likely to be arrested for crimes in addition to	

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			prostitution, solicitation and loitering. Oakland and Los Angeles were included in the study, thus providing some data that is California specific. The Covenant House report highlights that out of 270 youth respondents, 17% had been sex trafficked, 6% had been labor trafficked, and 20% had experienced both labor and sex trafficking. Interestingly, the data specific to Oakland showed a higher percentage of respondents trafficked for labor than for sex: 19% of youth respondents reported being labor trafficked in Oakland versus 15% for sex trafficking. The study further concluded that: The vast majority (81%) of labor trafficking cases reported in this study were instances of forced drug dealing. Nearly 7% (42) of all youth interviewed had been forced into working in the drug trade. Forced drug dealing occurred through familial and cultural coercion as well as through the violence of suppliers and gangs. This data highlights that in California we have not even begun to address labor trafficking based on coerced drug dealing in our youth population further evidencing the	

	Commentator	Position	Comment	Committee Response
			likely need for these youth to have access to sealing their records beyond the five years proposed by the Judicial Council. Finally, in CAST's experience, because of the nature of the crimes and control by their traffickers, individuals often do not self-identify as victims. Some of them further believe they were actually complicit in criminal acts that their traffickers forced them to commit, while others continually lie about their trafficking experience to protect their trafficker. This is often especially the case with child victims. Even with the most extensive screening and training for law enforcement, and others involved in child delinquency and dependency proceedings, the dynamics and indicators of all forms of human trafficking are so complex and often hidden that these experts have a difficult time identifying victims. This means that the dynamic of the crime itself requires a system in place to correct errors that are likely to occur with this victim population as was the designed purposed of PC 236.14. In conclusion, CAST is highly concerned about the Judicial Council's recommended sunset provision. CAST believes that extensive systemic change is needed so that child trafficking survivors are not arrested	

	Commentator	Position	Comment	Committee Response
			or/convicted of the multitude of crimes that traffickers force them to commit. It is our belief that the necessary changes will take far more than five years to be implemented. Based on our experience, CAST believes that the system may never identify all victims in a timely manner given the nature of trafficking dynamics. Accordingly, we firmly believe the PC 236.14 petition process should not be subject to any sunset provision, but rather the sealing of records option must be available in perpetuity. Suggested Language: Strike the following: Sunset Provision Conduct of the hearing (1) Unless amended or reenacted by Judicial Council action effective after the effective date of this rule, this rule is repealed effective January 1, 2020. Proposed Form JV-748 CAST makes the following suggestions and comments below about the Proposed Form JV-748. Inclusive Language and Simplicity of Forms CAST initially commends the Judicial Council for asking for specific comments and feedback on its proposed language and simplicity of its forms.	As stated above, the committee agrees to remove the sunset provision from the form. No response required.

	Commentator	Position	Comment	Committee Response
			CAST believes that identifying the petitioner as a "young person" is a sensitive and thoughtful choice by the Judicial Council to refer to this population. Many trafficking victims do not self-identify as victims and/or are too often pejoratively referred to as "defendants" in these types of proceedings. Using the phrase "young person" is both neutral and nonjudgmental. CAST further solicited feedback from the survivor advocates with whom we work, who are either young people who themselves were trafficked or who work with trafficked youth, and the responses it received about the term "young person" was consistently approved. For example, a response that CAST received from one of its survivor advocates trafficked as a young person was: "My opinion is 'young person' is definitely inclusive and non-gendered so absolutely a good phrase to use." In reviewing the overall language of the forms, and the instructions to the forms, CAST's assessment is that it is straight-forward and easy to understand and thus "youth friendly." However, CAST believes that some places in the forms misstate or	No response required.

	Commentator	Position	Comment	Committee Response
			fail to include the full requirements of the law and should be modified as suggested below. Evidence to Show Youth Was A Victim of Human Trafficking The instructions for the form Letter D appears to misstate the law in requiring a young person to use only police reports, delinquency petitions, or child welfare petitions to describe how the youth was a victim of human trafficking. Although these documents are permissible, they are not required. The proposed form should be clear that the youth can provide any evidence, including a declaration from the youth, relevant records, transcripts, or other documents to support the youth's claim that he or she was a victim of human trafficking. The form must be clear that "no official documentation" is required to support this claim in accordance with the language of PC 236.14(m) . In addition, SB 1322 (Commercial sex acts: minors), that went into effect in January 2017, mandates that no child can be arrested or convicted of solicitation, prostitution or	The committee agrees the instruction in item D should be clarified. Item D will be revised to read: "Fill out number 3 with information that describes how you were a victim of human trafficking. That information may, but does not need to, include information from police reports and delinquency of child welfare petitions. Check the box in 3 if you have documents to attach to this request." As it was circulated for comment, form JV-748 allows the court to grant the applicant's request without a hearing. As such, if the court finds that documentation of arrests or

	Commentator	Position	Comment	Committee Response
			loitering in California, (PC 647(b)&(l) and 653.22). Accordingly, a youth with arrests or juvenile adjudications for any of these crimes should be considered a per se victim of human trafficking. The arrest record or judicial adjudication alone should be sufficient to prove the request for sealing the records. The proposed Judicial Council Instructions should provide clear instructions on the forms so that a youth understands that no additional evidence is required to support sealing of these records for these specific crimes. Suggested Language: 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 box three if you have police reports or petitions to attach to this request. Be aware that no official documentation is needed to show that you were a victim of human trafficking. A Court can consider other evidence such as statements from you about your experience or other information you may have to show you were a victim of human trafficking. If you were arrested or	adjudications for the crimes noted by the commenter sufficient to meet the statutory standard, it may grant the request without a hearing. Since the form already allows for the relief suggested by the commenter, the committee declines to change the form.

	Commentator	Position	Comment	Committee Response
			convicted of PC 647(b), (l) and 653.22 be aware that you do not have to provide any additional information unless you have other arrests and convictions you also hope to have removed from your record. 1. Add: I have attached other information such as my own statement that describes how I was a victim of human trafficking and that the crime(s) committed was a direct result of my being a victim. Request for Additional Action Court May Take The intent of the legislature and the clear statutory language of section 236.14 (r) allows a court granting relief pursuant to this section to take additional action as appropriate to carry out the purposes of this section. The availability of this additional relief is not included in the instructions to the proposed form, thus, the youth does not know that he or she may make a specific request for it. CAST proposes the following clarifying language be included in the instructions and on the proposed form to ensure a better understanding by youth that	The committee agrees to include an additional instruction that states: "You may ask the court to take additional action. If you want the court take additional action, complete number 9." In addition to this instruction, item number 9 will be added to form JV-748. Item number 9 will read: "Under Penal Code section 236.14, I am asking the court for additional relief. The action I want the court to take and the reason I want the court to take the action, is written below:"

	Commentator	Position	Comment	Committee Response
			additional relief is available but must be specifically requested. Suggested Language: Insert in the instructions Letter H as follows: H. The Court is allowed to take additional action as appropriate to carry out the purposes of this relief. Are you asking for any additional relief from this court? Yes No If yes, describe this request and provide supporting documentation as needed. If necessary attach additional pages. Request to Return Fines and Fees Under PC 236.14, petitioners are allowed to apply for relief even if they have not completed the terms of probation or paid outstanding fines or fees. Many trafficking victims have spent years trying to pay the fines and fees ordered. If the delinquency petition is sealed under PC 236.14, a youth should be able to explicitly request a return of these fines and fees by the court unless,	While the committee understands the basis of this request, Penal Code section 23.14 does not state that paid fines and fees should be reimbursed. In the absence of statutory language authorizing reimbursement for fines and fees already paid, it is beyond the Judicial Council's purview to require such an order. Even where the purpose of legislation is to repeal certain fees, as in Senate Bill 190

	Commentator	Position	Comment	Committee Response
			as provided in Section 236.14(i), it "is financial restitution ordered that benefited the victim of a nonviolent crime." A question on the Judicial Council proposed form should clarify to the court if the petitioner is (1) requesting the return of any fines or fees paid to the court and (2) the amount paid, if known. Suggested Language: Insert in Instructions to the form Letter I as follows: I. The Court is allowed to return any fines and fees you paid as a result of your delinquency adjudication. Please let the Court know if you have paid any fines and fees and the amount if known. 7. I am requesting the court return fines and fees paid as a term of my delinquency adjudication. Yes/No I request the return in the amount _____(Insert if Known) Proposed Order JV-749	([Mitchell]; Stats. 2017, ch. 678), the court cannot order reimbursement of already paid fines and fees, in the absence of an explicit authorization. The committee agrees to revise form JV-749 to state that outstanding fines and fees related to dispositions that are vacated will be set aside and discharged.

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			PC 236.14 (d) makes clear that a request can be granted by a Court without a hearing. This provision is an important provision of PC 236.14 as it can save the victim being re-traumatized by having to appear in court. Therefore, Question 1 of the proposed order should be updated to state that the order to vacate arrest or adjudication can be granted without a hearing if it is uncontested and the court makes the decision not to hold a hearing. Suggested Language: (1) The Applicant and/or counsel were personally present at the hearing, or appeared by phone or video conference or The court determined the matter without a hearing as allowed under 236.14(d)	Section 236.14(d) authorizes the court to grant an unopposed petition without a hearing; however, 236.14(f) states that the court must set a hearing if there is opposition to the request or if the court deems it necessary. Furthermore, form JV-749 includes a waiver of appearance and an option for the applicant to appear by phone. However, the committee agrees that instruction item F should be revised to state that the court "may" set a hearing.
			Further, trafficking victims who are minors may still be on probation when the order for sealing is granted. To ensure that probation is efficiently terminated, the order should expressly state that the appropriate probation program must be notified and probation terminated.	The committee agrees that form JV-749 needs clarification. To make it clear that the disposition must also be vacated, number 4 on form JV-749 will be revised as follows: "The court [] grants [] denies the applicant's request to dismiss the adjudication(s) and related petition(s) listed in the request. The

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SP18-24

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	Commentator	Position	Comment	Committee Response
			Suggested Language: Insert the following language at 6(f): Any and all terms of probation are hereby terminated for the adjudications listed in the petition and the appropriate probation programs are notified that probation should be terminated as of _____(INSERT DATE) The court should also have space on the order form to specifically order the return of all fines and fees associated with the adjudications in the petition. Suggested Language: Change number 7 to 8. Insert as number 7 the following language: 7. The Court orders the return of fines and fees for the adjudications listed in the petition in the amount of _____(INSERT AMOUNT) Process For Consolidating Petitions From Multiple Jurisdictions CAST is concerned about the limited, and in some cases, complete lack of guidance that the Judicial Council provides for applicants	court further orders the associated disposition(s) be vacated. As stated by the commenter, the directions section of form JV-748 states that the court is to serve the application, unless the applicant is

	Commentator	Position	Comment	Committee Response
			about (1) the requirement to serve this form and (2) how the arrests and adjudications will be properly consolidated. Noting that human trafficking commonly leads to multiple arrests and convictions across the state, the legislature directed the courts to provide a streamlined process that would save the courts both time and money and avoid re-traumatization of human trafficking victims. CAST applauds the Judicial Council in its instructions to form JV-748 that in the case of a petitioner without counsel the court takes on responsibility to serve this form. However, in cases where an applicant has an attorney, the responsibility is then transferred back to the petitioner. CAST urges the Judicial Council to make this process uniform for all applicants, even those with counsel, by directing the court to undertake service in all cases and to coordinate the consolidation of the petitions. If the Judicial Council continues the policy of requiring petitioners with counsel to be responsible for service, than additional guidance and support for this process should be proposed by the Council. For example,	represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff. Consolidation of the petitions is also addressed in the directions section of form JV-748; however, the committee will modify the form to clarify that the hearing will take place in the county where the application for relief is filed. As stated by the commenter, the directions section of form JV-748 states that the court is to serve the application, unless the applicant is represented by an attorney. While the committee understands the desire to have the court effect service even when the applicant is represented, such a requirement would place an undue burden on court staff.

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			CAST recommends updating form JV-748 Judicial Council forms to provide clearer instructions to the applicant to serve the involved parties, certify this service, and to clarify the date on which the court can deem the petition unopposed. Further, CAST suggests that the Judicial Council provide a sample stipulation that can be provided by the petitioner to prosecution and law enforcement agencies at the same time of service of the petition to further simplify the process of consolidating the petitions. If additional outreach is needed by the courts to secure court acceptance of consolidation , then the court should have clear instructions on how to conduct this outreach and propose a system that allows for e-filing and notification across multiple jurisdications. Coordination with the court by petitioner, a survivor of human trafficking and/or his or her likely pro bono or nonprofit legal service provider, will likely not be efficient or possible for counsel to secure in a timely manner. Conclusion Thank you for considering these comments	

	Commentator	Position	Comment	Committee Response
			when revising the forms implementing PC 236.14. CAST, and particularly the survivors we serve, greatly appreciate this effort by the Judicial Council to provide additional clarification and support in filing 236.14 petitions that provide critical new protections for survivors of modern slavery in California.	
7.	Department of Human Services, Kern County by Becky Hagar, MSW, Program Specialist	A	The proposed changes are consistent with CCR and changes necessary to offer youth opportunities to re-enter foster care regardless of past convictions. The suggested forms and changes also are consistent with these changes. The AB12 Re-entry forms and all associated forms would need to be changed as noted in this proposed change. Please see answers to specific questions below: 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	No response required. No response required. No response required.

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			the stated purpose? Yes, despite the complexity, it does address the primary core purpose as state above.	
			• 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? "Youth" may be more appropriate.	The committee considered using the term youth but concluded that "young person" is more appropriate because it includes those applicants who are over the age of 18 years of age.
			• Are the petition for vacatur and the accompanying order written plainly enough that they will be accessible to the juvenile and young adult population? Although it was stated that simplified language was used, the forms still contain a lot of legal language that is not simple or clear to a layman. Further, it is important to note that despite these efforts our youth would still find difficulty in navigating through these items without assistance (given that a lot of the youth struggle with mental health, substance abuse and/or other delays).	The committee acknowledges that the form contains legal terminology that may be difficult for a lay person to understand; however, the committee believes this language is necessary to effectuate the legal intent. The committee attempted to produce legal form that is both accurate and more easily accessible to the public than most legal forms.
			• Is the table on form JV-748 sufficient to obtain information about convictions and arrests from other jurisdictions in the state? The form is comprehensive but complete.	No response required.

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
			Enough information is requested. • 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? I don't see the benefit of this. As long as the parties involved maintain the youth's confidentiality and only those party to the matter are privy to the information, anonymizing the name would not be necessary. • 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? Sunset period seems appropriate.	No response required. As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
8.	Orange County Bar Association by Nikki P. Miliband, President	AM	The proposal appropriately addresses the stated purpose to allow youths under delinquency jurisdiction to remain eligible for extended foster care even if the underlying petition is vacated. The term "youth" should be used in lieu of	No response required. The committee considered using the term

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

SP18-24

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	Commentator	Position	Comment	Committee Response
			"young person."	"youth" but concluded that "young person" is more appropriate because it includes those applicants who are over the age of 18 years of age.
			The petition for vacatur forms appear to be accessible and drafted in sufficiently plain terms; the table on the JV-748 form provides enough information.	No response required.
			Anonymizing the name of the youth is not necessary due to the confidential nature of the proceedings. Including the name of the youth will provide less confusion in maintaining court files.	No response required.
			The 5-year sunset rule should be slightly extended due to the young age at which some offenders enter the delinquency system.	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
9.	Superior Court of Orange County by Cynthia Beltran, Administrative Analyst	A	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? Most of our forms and internal documents,	The committee considered using the term "youth" but concluded that "young person" is more appropriate because it includes those applicants who are over the age of 18 years of age.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			reference "youth" or "minor."	
			Are the petition for the vacatur and the accompanying order written plainly enough that they will be accessible to the juvenile and young adult population? Yes	No response required.
			Is the table on form JV-748 sufficient to obtain information about convictions and arrests from other jurisdictions in the state? Yes	No response required.
			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? Yes	The committee believes it is not necessary to include additional provisions to anonymize the applicant's name because these requests will be filed in juvenile court, where the cases are already protected by confidentiality.
			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? Yes	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
10	Superior Court of Riverside by Susan D. Ryan, Chief Deputy of	A	Position on the Proposal: Agree with the proposal.	

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
	Legal Services		Response to Request for Specific Comments: • Does the proposal appropriately address the stated purpose? Yes. • Is the term "young person" appropriate? Yes. • Are the petition for vacatur and the accompanying order written plainly enough that they will be accessible to the juvenile and young adult population? Assuming that this question refers to form JV-748 Request to Vacate Arrest or Conviction, and form JV-749 Order After Request to Vacate Arrest or Conviction, yes, the forms seem to be written as plainly as possible and the directions are complete and clear. • Is the table on form JV-748 sufficient to obtain information about convictions and arrests from other jurisdictions in the state? Yes, however it would also be helpful if the	No response required. No response required. No response required. The committee will revise form JV-748 to include a request for the petition file date.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
			petition file date was provided. What is meant by Arrest or Adjudication? Is the form asking for the date of arrest or adjudication? If so the form should clearly state "date of arrest or adjudication".	
			• 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? No.	No response required.
			• 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? Probably, however there may be an occasional request after five years.	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
			• Would the proposal provide cost savings? No.	The committee believes that these forms made provide cost savings by creating a uniform procedure versus the ad hoc approach, which is likely to waste time as court staff attempts to reconcile individual processes.
			• What would the implementation requirements be for courts?	The committee agrees that these forms will necessitate minor implementation

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SP18-24

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				requirements.
			Clerks' office and courtroom staff would need to be trained on how to process these types of requests and orders (approximately one (1) hour). Procedures would need to be created for filing the requests, setting the hearings and completing minute entries. Codes would need to be created in the case management system for processing the documents and hearings. Procedures would also need to be updated for the sealing of records as well as the processing Welfare & Institutions Code § 827 requests. Minimal changes or training would be required for the changes to the other existing forms. Perhaps some minor adjustments to minute codes.	
			• Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			• How well would this proposal work in courts of different sizes? The same updates to procedures, codes, and training would likely need to occur in any size court. The proposals should work the same for courts of any size.	No response required.

SP18-24

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	Commentator	Position	Comment	Committee Response
11.	Superior Court of San Bernardino County by Executive Office	AM	Comments: Form JV-466 line 4 – refers to "My arrest and conviction" – would "disposition or finding of true" be appropriate?	The committee agrees that the word "conviction" should be replaced with "adjudication."
			The form should be clear that it is not for PC647-Drunk in Public.	This form does not directly refer to PC 647f, which recently removed from the Penal Code.
			The form should also have an area for the "County" where the disposition took place, as the minors are often transferred from one county to another depending on which county they reside.	The committee will revise form the table on JV-748 to include a column where the county of disposition can be entered.
			The form should include a line if the minor would like the order mailed to them after the court hearing, and should indicate "mailing address" in case the minor resides in an area where mail is not delivered, i.e. PO Box.	The form JV-748 will be revised to include a space where the applicant can include an alternate address.
			The sunset of five years is appropriate; six months would provide ample time for procedural, training and revising processes.	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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	Commentator	Position	Comment	Committee Response
12	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose? Yes, except for the incorrect terminology used to implement AB 604. It is the adjudication (not the petition) that the court may vacate. If the court vacates the adjudication, the petition (not the adjudication) is dismissed (not vacated). (See PC § 236.14 and comments below.)	The forms will be revised to accurately reflect the terms used in juvenile court.
			• 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? Suggest "youth" for brevity and because it can apply to both minors and nonminors. "Ward" is not appropriate if the applicant was arrested but no petition was filed.	The committee considered using the term "youth" but concluded that "young person" is more appropriate because it includes those applicants who are over the age of 18 years of age.
			• Are the petition for vacatur and the accompanying order written plainly enough that they will be accessible to the juvenile and young adult population? Yes.	No response required.
			• Is the table on form JV-748 sufficient to obtain information about convictions and arrests from other jurisdictions in the state? See comments below for JV-748.	

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
			• 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? Could this problem be solved by marking the forms "CONFIDENTIAL" (see, e.g., CLETS-001) and/or a warning box (e.g., "The information written on this form is confidential pursuant to Welfare and Institutions Code section 827")? Perhaps amendments should be sought to WIC § 827 and/or Cal. Rules of Court, rule 5.552 to include vacatur petitions and orders in juvenile cases.	After consideration, the committee believes it is not necessary to include additional provisions to anonymize the applicant's name because these requests will be filed in juvenile court, where the cases are already protected by confidentiality.
			• Is five years a sufficient time period to provide young people time to request vacatur or should the sunset period be longer? The sunset period should be longer. There are many factors that can contribute to delay in seeking vacatur: e.g., unawareness of the availability of the remedy, emotional trauma, fear of retaliation, physical recovery from abuse and/or addiction, et al. Input should be sought from professionals who work closely with survivors, e.g., Coalition to Abolish Slavery and Human Trafficking (www.castla.org), Free to Thrive	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.

	Commentator	Position	Comment	Committee Response
			(www.FreetoThriveSD.org).)	
			• Would the proposal provide cost savings? Unknown.	No response required.
			• What would the implementation requirements be for courts? Print and distribute revised forms to court staff, attorneys, trafficking survivor service providers, et al. Train court staff how to process new forms. Create or revise any written internal procedures.	The committee agrees that these forms will necessitate minor implementation requirements.
			• Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Probably.	No response required.
			• How well would this proposal work in courts of different sizes? Unknown.	No response required.
			<u>Form JV-320</u>	
			Page 3, item 15.d.: Query – Because item 15.c. reads "is terminated," shouldn't item	Item 15.d. on form JV-320 should include "not." The form will be revised accordingly.

	Commentator	Position	Comment	Committee Response
			15.d. read "is not terminated"? **Form JV-367** **Page 1, right footer:** Query – Should the citation include all of the statutes cited in Cal. Rules of Court, rule 5.555, i.e., add §§ 224.1(b), 303, 366.31, 451, 452, and 16501.1(g)(16)? Welfare & Institutions Code, §§ 224.1(b), 303, 366.31, 391, 451. 452. 607.2, 607.3, 16501.1(g); Cal. Rules of Court, rule 5.555 **Page 3, Item 31.b.:** Query – Should "legal guardianship" be added as a permanent plan? (See, e.g., WIC § 366.3(a) [court shall retain jurisdiction over child or NMD until legal guardianship is established].) b. The nonminor's permanent plan is (1) Return home	Unlike the rules, space on the forms is limited; consequently, only the most statutes are included on forms. Legal guardianship was not included in the list because it is not a legally permissible plan for nonminor dependents. According to Probate Code section 1600, guardianships terminate by operation of law when the young person turns 18 years old. As such, a guardianship through dependency court cannot be initiated after a person reaches 18 years of age. It must be assumed that inclusion of guardianship in Welf. and Inst.

	Commentator	Position	Comment	Committee Response
			(2) Adoption (3) Tribal customary adoption (4) Legal guardianship (5) Placement with a fit and willing relative (6) Another planned permanent living arrangement (7) Other (*specify*)	Code section 366.3(a) must have been an oversight on the legislature's part.
			Page 3, Item 31.c.: Query – Is this item necessary? What statute or rule requires the court to find that APPLA is still the best permanent plan and to state the reasons for that finding *at the hearing to consider termination of jurisdiction*? Granted, it is required at the NMD status review (WIC § 366.31(e)(10)(B)), but there does not appear to be any such mandate in WIC § 391, 607.2, or 607.3. CRC rule 5.555(d)(2)(B) merely requires the court to order a permanent plan consistent with the nonminor's TILP or TILCP. Also, assuming this finding is necessary and remains on form JV-367, is (1) by itself ("The nonminor is 18 or older") an adequate reason for finding that APPLA is still the best permanent plan?	The purpose of revising this form is to include the findings and orders that are required to be made when court jurisdiction is continued, so that courts only need to use one form. Currently, if the court denies a request to terminate jurisdiction over a nonminor, it must use this form and an additional form to document the appropriate findings. While it is true that Welf. and Inst. Code section 391 does not require this language, Welf. and Inst. Code section 366.31, which sets forth the findings to be made at nonminor dependent review hearings, does require this language. As for the second question, the committee believes that it is an adequate reason. It recognizes that the purpose of extended foster care is to treat nonminor dependents as adults who are working toward independence and learning to live on their own.

	Commentator	Position	Comment	Committee Response
			Likewise, is there any statute or rule requiring the court to state, *at the hearing to consider termination of jurisdiction,* compelling reasons why other permanent plan options are not in the nonminor's best interest? Yes, this finding is required at the NMD status review (WIC § 366.31(e)(10)(C)), but there is no such requirement in WIC § 391, 607.2, or 607.3 or CRC rule 5.555(d).	Please see the answer above.
			Page 3, Item 27.a.: Query – Should "legal guardianship" be added as a permanent plan? a. The youth's permanent plan is: (1) return home (2) adoption (3) tribal customary adoption (4) <u>legal guardianship</u> (5) placement with a fit and willing relative (6) another planned permanent living arrangement (7) other (*specify*)	Legal guardianship was not included in the list because it is not a legally permissible plan for nonminor dependents. According to Probate Code section 1600, guardianships terminate by operation of law when the young person turns 18 years old. As such, a guardianship can not be initiated through dependency court after a person reaches 18 years of age. It must be assumed that inclusion of guardianship in Welf. and Inst. Code section 366.3(a) must have been an oversight on the legislature's part.

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
			Page 3, Item 27.b.(1): Query -- Is (1) by itself ("The nonminor is 18 or older") an adequate reason for finding that APPLA is still the best permanent plan?	The committee believes that it is an adequate reason. It recognizes that the purpose of extended foster care is to treat nonminor dependents as adults who are working toward independence and learning to live on their own. This commenter submitted grammatical and typographical edits to the rules and forms. Those edits in keeping with the Judicial Council's style guide were made.
13	Superior Court of Ventura County by Keri Griffith, Juvenile Court Manager	AM	Note that on page 13, Rule 5.811(g) has a sunset date of January 1, 2020. I believe it should be January 1, 2024.	As stated above, the committee is persuaded by the argument that crimes related to sex trafficking may continue to be prosecuted and that it may take time for victims of sex trafficking to address the legal issues. Consequently, the committee agrees to remove the sunset provision from the forms.
			On Page 2 of the Request to Vacate Arrest or Conviction (JV-748), under 5(b), Waiver of Appearance, modify to read: I can appear at the hearing by telephone or videoconference, if the court allows this type of appearance.	The committee will revise the form as suggested.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
14	Trial Court Presiding Judges Advisory Committee (TCPJAC)	AM	Recommended JRS Position: Agree with proposed changes if modified. The JRS notes the following impact to court operations: • This proposal would result in additional training, which requires the commitment of staff time and court resources. The only terms that make legal sense and should be used are "minor/non-minor." This describes a division between those under and over 18, which is important for transitional foster care. • The forms, case, hearing, etc. are all confidential, and all the players would already have "the young person's" name. It is not necessary to anonymize the name on the forms. • Form JV-464-Info should include information on how a minor may acquire a copy of his/her criminal record as found in form JV-595-Info.	The committee agrees that these forms will necessitate minor implementation requirements. The committee concluded that "young person" is more appropriate because it does not have juvenile justice overtones. No response required. Committee will modify form JV-464-Info to include this language: "If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
				If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See http://oag.ca.gov/fingerprints/security for more information."
			• Rule 5.811, (page 9) after paragraph (1) on line 11, the phrase "The minor:" should be placed on line 13, with paragraphs (2) through (5) coming after that phrase. It makes more grammatical sense.	The committee agrees that this subsection should be modified and will move the first sentence to the end of the list.
			• In Section(d) Reports, at lines 20 and 24, paragraph (3), where it says "a young person" it should say "within the jurisdiction." In Section (g) Sunset Provision, the repeal effective date on line 14 should be 1-1-24, not 1-1-20, to match the five-year window.	The court will revise the rule to add the phrase "within the jurisdiction," as suggested. After reviewing many comments expressing concern with the sunset provision, the committee has determined it is best to remove that provision altogether.
			• As to JV-464-INFO, "Do I Qualify to Return to Juvenile Court…" should be the first paragraph, not the second.	Thank you for this suggestion; however, this change was not part of this proposal and, because this form has been in use for quite some time, the suggestion is one that requires input from interested parties. We will make note of this suggestion and consider changing the form during the next legislative cycle.

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

SP18-24

Juvenile Law: Nonminor Dependents: Extension of Services (amend Cal. Rules of Court, rule 5.812, 5.903, and 5.906; adopt rule 5.811; approve JV-748 and JV-749; revise JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683)

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

	Commentator	Position	Comment	Committee Response
			• On the 2nd page, there should be an "or" in the space between the first two paragraphs in the section "Where do I File my Completed Form?"	The committee will revise the form accordingly.
			• On page 3, there should be an "or" between the first and second bullet points and the second and third bullet points, since these are all options the judge has.	The committee will revise the form accordingly.

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

Item number: 24

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 08/23/2018

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:
Project description from annual agenda: The Family and Juvenile Law Advisory Committee recommends revising Judicial Council form JV 690 to correct inaccuracies in the listed offenses and to conform the form to Welfare and Institutions Code section 827(b)(1). The current form 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 Welfare and Institutions Code section 827(b) and give the court the option to indicate the specific code section of the offense that was adjudicated. In response to public comments, the form would also be revised to include notice under Education Code section 48267.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Juvenile Law: School Notification of Delinquency Court Adjudication

Rules, Forms, Standards, or Statutes Affected
Amend form JV-690

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 13, 2018

Contact
Daniel Richardson, 415-865-7619
Daniel.richardson@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising Judicial Council form JV-690 to correct inaccuracies in the listed offenses and to conform the form to Welfare and Institutions Code section 827(b)(1). The proposed changes reflect closely the language of Welfare and Institutions Code section 827(b) and give the court the option to indicate the specific code section of the offense that was adjudicated. The form would also be revised to include notice under Education Code section 48267.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise *School Notification of Court Adjudication* (form JV-690) to:

1. Provide clarity and conformity with the Welfare and Institutions Code on what information is disseminated to a school when a child has committed certain criminal offenses;
2. 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;

3. Remove offenses from the form that are no longer eligible as felonies or misdemeanors; and
4. Provide for notice under Education Code section 48267.

The proposed revised form is attached at pages 8–9.

Relevant Previous Council Action

The Judicial Council approved *School Notification of Court Adjudication* (form JV-690) for optional use in 2011 as part of a proposal to approve 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 requirements in Welfare and Institutions Code section 827(b) to notify a child's school district if the child is found to have committed an enumerated offense.[1] 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.

Analysis/Rationale

This 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 revisions to the form fall under the following four areas:

1. Clarifying how the form should convey information about the child's criminal offense to the school;
2. Adding instructions on dissemination;
3. Removing offenses that are infractions; and
4. Providing for notice under Education Code section 48267.

Offense disclosure

Form JV-690 currently includes a list of the type of offenses of which the school is being notified, each followed by a citation to a specific code section. The form lists twenty-one commonly adjudicated criminal offenses with the accompanying code section, including an option to include other offenses not list. The list of offenses on the current form and their accompanying code sections present some complications and inaccuracies that the committee is addressing in its recommended revisions. For instance, Penal Code sections 12020 and 120101

[1] All further code references are to the Welfare and Institutions Code unless otherwise indicated.

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 all that could be included under the list of offenses in section 827(b). For example, on the form, "Gambling (Pen. Code, § 337a)" does not capture all the offenses that could be considered an offense described as "gambling."[2] Also, "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 has removed the specific code sections currently listed on the form. Instead, the committee is recommending that the form be revised to list the generic offense type and indicate that it is optional for the court to indicate the specific code section for the offense.

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. Section 827(b) and (d) gives detailed instructions on dissemination of the form. When a school district receives the form, 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.

Therefore, the second page of the form incorporates the specific directives on the form's dissemination and use, as found in section 827(b) and (d). The language has been partially revised as plain language to promote readability. The instructions include 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 on the dissemination of the form are followed.

Infractions

Because of changes in the law, some offenses listed in section 827(b) can no longer be considered misdemeanors or felonies, such as offenses related to curfew and tobacco possession. These offenses are, however, 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 to the school infractions related to curfew or tobacco. Therefore, curfew has been removed from the form so that infractions related to curfew are not communicated to the school unnecessarily. And, for offenses related to tobacco products, the form has been revised to reference only "distribution of tobacco products." Possession by a

[2] See Penal Code chapter 10, Gaming (§§ 330–337z).

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,[3] but distribution of tobacco is still a misdemeanor under Penal Code section 308. If these offenses again become felonies or misdemeanors, the form can be revised to include them.

Notice under Education Code section 48267

Based on a comment as discussed below, the committee also recommends incorporating notice as required by Education Code section 48267. Section 48267 requires that notice be given to the superintendent of the school district of attendance or a designee child's school when a child is found by the court to be a person described by section 602 and as a condition of probation is required to attend a school program approved by a probation officer.

The committee recommends that the form incorporate these requirements so the juvenile courts can comply with section 48267 by using the form, because currently no other Judicial Council form can be used to provide notice under section 48267 and this form is familiar to school districts. The form has been revised to include the option to indicate that notice is being provide under section 48267. In addition, further instructions on the dissemination of the form when notice is provided under section 48267 have been added to page two because section 48267 and section 827(b) differ in how they state that the form may be disseminated.

Policy implications

The committee considered the broader context of the evolving policy behind juvenile justice in resolving how information should be shared with the child's school district. The landscape of juvenile justice has changed significantly since section 827(b) was last amended in 1994. Policy has shifted toward recognizing juvenile offenders as adolescents in need of rehabilitation efforts. For example, in 2016 California voters approved Proposition 57, which amended the process by which juvenile offenders may be transferred to the jurisdiction of the criminal court by eliminating the authority of prosecutors to directly file petitions in criminal court and requiring that the juvenile court hold a hearing and determine if a transfer is appropriate. Before implementation of Prop. 57, other changes in the law and reform efforts led to a significant drop in the number of juvenile offenders at the Division of Juvenile Justice.

And perhaps most important to this discussion, recent legislation related to the sealing of records demonstrates the law's desire to avoid stigmatizing juvenile offenders. 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 Council form that can be used to petition the court for sealing under section 781.[4] 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)

[3] Sen. Bill 7 (Hernandez; Stats. 2016, ch. 8).

[4] Assem. Bill 1006 (Yamada); Stats. 2013, ch. 269.

offender and who satisfactorily completed probation.[5] 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 old to petition the court to seal the record, with certain exceptions.[6]

The committee considered these developments in juvenile justice when determining how information about the child's offense should be communicated. As discussed below, section 827(b) is open to interpretation as to whether the specific code section of the offense committed or the generic description of the offense as listed in section 827(b) should be communicated to the child's school. The committee elected to make the disclosure of the offense committed optional, giving the court greater discretion to make this determination based on the case before it. The committee reasoned that doing so will help to further the policy objective of offering juvenile offenders a chance to have a clean record when they graduate from probation. In so doing, juvenile offenders avoid the collateral consequences of adjudications that have in the past posed barriers for youth such as having to reenroll in a regular school program, limiting employment opportunities and military service, and excluding immigration relief.

Comments

The invitation to comment on this proposal circulated from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Six comments were received. Two commenters agreed with the proposal, and three commenters agreed with the proposal if modified. No commenters opposed the proposal.

As noted above, a comment on behalf of the Superior Court of Los Angeles County recommended that the form include a check box that indicates that notice is being given as required by Education Code section 48267. Section 48267 requires that notice be given to the superintendent of the school district of attendance or a designee child's school when a child is found by the court to be a person described by section 602 and as a condition of probation is required to attend a school program approved by a probation officer. In response to this comment a member of the committee conducted an informal poll to determine compliance with section 48267 and it appears that many courts are not in compliance with this requirement. The committee recommends that the form incorporate these requirements so the juvenile courts can comply with section 48267.

Another commenter recommended that the code sections be listed on the form or, if listing only the generic offenses, a notation that if they need more specific charge information they could contact the court. As discussed below, the committee carefully considered leaving the code sections on the form but decided that the form would be more closely aligned with section 827(b) and more accurate if including the code sections was optional. The committee determined that the form should give the court the discretion to include code sections, taking into account the

[5] Sen. Bill 1038 (Leno); Stats. 2014, ch. 249.

[6] Sen. Bill 312 (Skinner); Stats. 2017, ch. 679.

nature of the offense and the particular facts of each case. Leaving code sections off the form will also extend the life of the form if code sections are amended in the future. In addition, it would be nearly impossible for the form to include all the criminal offenses that would be required to be reported to the school under section 827(b). If the school needs more information, the form clarifies on page 1 that the probation officer may be contacted.

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 section 827(b), the committee elected to proceed with the proposed amendments.

The committee also considered the following three options for how the form would convey information on a child's offense: (1) include the generic offense as listed in section 827(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; and (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.

Section 827(b) is a limited exception to the overriding purpose of section 827 of protecting the confidentially 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.[7] 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 section 827(b). The statute 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.[8] 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 so, "written notice that a [child] . . . has . . .

[7] *T.N.G. v. Superior Court* (1971), 4 Cal.3d 767, 780.

[8] After researching the matter, CFCC staff are unaware of any published case law decisions interpreting section 827(b)(2)(A).

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 that the code section of the adjudicated offense be communicated to the school. Another interpretation is that the plain language of section 827(b) requires only that the school be notified of an offense involving the generic crimes as listed in section 827(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 section 827(b), the context of section 827(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 decided that given the context of section 827 and recent developments in the law related to the sealing of records,[9] the disclosure should as closely as possible preserve 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, giving the court flexibility 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 section 827(b) does not prohibit the disclosure of the specific 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.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs. The form has expanded from one page to two to accommodate the extra directives that the committee believes are important for proper dissemination of the form, so printing the form will now require both sides of a single sheet of paper.

Attachments and Links

1. Form JV-690, at pages 8–9
2. Chart of comments, at pages 10–19

[9] 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 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.)

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) and Education Code Section 48267)

TO SUPERINTENDENT:

SCHOOL DISTRICT:

MAILING ADDRESS:

CITY, STATE, ZIP CODE:

1. YOU ARE HEREBY NOTIFIED that *(child's name):* _____, born on: _____, is currently enrolled in your public school and that under:

   a. ☐ Education Code section 48267, the child is in a grade 7 thru 12 and is described by section 602, and a condition of probation requires that the minor attend a school program approved by the probation officer *(see additional requirements on page two item 1).*

   b. ☐ Welfare & Institutions Code section 827(b), the child is in a grade kindergarten to grade 12 and was found by court of competent jurisdiction to have committed a felony or misdemeanor involving

   (1) ☐ gambling *(code section, optional):*

   (2) ☐ alcohol *(code section, optional):*

   (3) ☐ drugs *(code section, optional):*

   (4) ☐ graffiti *(code section, optional):*

   (5) ☐ carrying of weapons *(code section, optional):*

   (6) ☐ a sex offense listed in section 290 of the Penal Code *(code section, optional):*

   (7) ☐ assault or battery *(code section, optional):*

   (8) ☐ larceny *(code section, optional):*

   (9) ☐ vandalism *(code section, optional):*

   (10) ☐ distribution of tobacco products *(code section, optional):*

2. THE COURT-ORDERED DISPOSITION of the child's case is *(complete only for section 827(b))*

   a. ☐ wardship probation

   b. ☐ Division of Juvenile Facilities (DJF aka DJJ) commitment

   c. ☐ nonwardship probation

   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.

Form Approved for Optional Use
Judicial Council of California
JV-690 [Rev. January 1, 2019]

Welfare and Institutions Code, § 827(b)
Education Code, § 48267
www.courts.ca.gov

FURTHER INSTRUCTIONS ON DISSEMINATION

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.

If the form is being used for notice under Education Code section 48267, the rules for its dissemination are different. If the child is in a grade from 7 to 12, the juvenile court must notify the superintendent of the child's school district when the child is described by section 602 and a condition of probation requires attendance in a school program approved by the probation officer. This information must be expeditiously transmitted to the principal or to one person designated by the principal of the school that the minor is attending. The principal or the principal's designee must not disclose this information to any other person except as otherwise required by law.

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 or to promote school safety.

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.

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.

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.

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.

S18-26

Juvenile Law: School Notification of Delinquency Court Adjudication (Amend form JV-690)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By Nikki P. Miliband, President Newport Beach, CA	A	Newly amended form JVC 690 conforms to recent changes in the law. The offenses listed in Welfare and Institutions Code section 827(b)(2)(A) do not cite any code sections. The suggested option of citing the code section next to the offense should the court wish to do so should remain. The content and readability of the second page admonitions is fine as drafted.	No response required.
2.	Joseph Stevens Compliance Assistant Student Intern Bakersfield, CA	A	This proposal is going to add clarity to a rather convoluted administrative process that would serve to ensure that adjudicated youth are properly identified along strict guidelines. I would like to see that provisions are followed when a Probation Investigation Officer is requesting student data (social study); specifically, when gathering on a pre-adjudicated minor who is before the court. It seems that school districts are not uniform in their policies when these contacts for requests include secretaries, teachers, as well as those not within the mandate providing dissemination guidance: School District Supervisor's. In my own experience, I have seen where a pre-adjudicated minors charges became the catalyst for school officials targeting the disseminated minor following a Probation Investigations request. The need to ensure strict adherence and create a specified contact "choke-point" for confidential information requires consideration. Unless mandated within policy, that currently could attach within SPR18-26, the foreseeability these requests will continue to be misconstrued to create the perception that a youth has been adjudicated. The courts have a duty of due	The committee appreciates these comments and agrees with many of the points made by the commenter. This proposal however addresses amendments to the form JV-690, and cannot be expanded into other legal areas that are not in the scope of the proposal. This proposal only addresses the disclosure required by section 827(b) and Education Code section 48267, which occurs after adjudication. The committee hopes that the admonitions on page two will help to inform those involved with delinquent minors of the strict rules around the confidentiality of the juvenile case file information. It is a misdemeanor to disseminate the contents of the juvenile court case file. The protections of section 827 apply not only to the documents in the case file, but also the information contained therein. *T.N.G. v. Superior Court* (1971), 4 Cal.3d 767, 780. This would include during pre-adjudication. Section 827(a)(1)(G) does however authorize the superintendent or designee of the school district where the minor is enrolled to inspect the case file. Any further dissemination of information beyond the superintendent or designee would be a misdemeanor, unless section 827(b) applied. Some of the issues raised by the commenter could

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

	Commenter	Position	Comment	Committee Response
			diligence to protect unnecessary dissemination; especially, at the crucial stage during a minors proceedings. As holder of the minors confidential record, even as it develops to become an official case file, a clear policy that restricts the contact person from being someone who simply "answers a phone"; and instead, a person who shares the same understanding as the District Supervisor. It is my hope that school safety is never sacrificed and in protecting students, it becomes necessary that staff is aware of any potential student whose behavior resulted in a formal adjudication. Nonetheless, protecting any dissemination that could harm a pre-adjudicated minor, the public's trust, and especially any harm that could result in reversible error and subsequent appellate review. A study would likely find the potential to correlate a significant reduction of State allocations that are earmarked for the following results when there is no established protocol: unnecessary School Administrative hearings, civil litigations in suit, and the increased burden of cases being subjected to appellate review; for which the error and prejudice was likely preventable. For additional metrics based on a case study, conducted on my personal experience and including the parameters in the above mentioned example of my son's California Petition: feel free to contact as he has already agreed to release liability for any, and all, Judicial Council studies that would serve to improve record retention at school sites for student's protection. Voters and legislators alike,	therefore be resolved within the parameters of section 827. While this proposal cannot address some of the concerns raised by the commenter, the comments are recognized by the committee and will be used to consider the development of future proposals by the committee.

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

	Commenter	Position	Comment	Committee Response
			assert their support of inter-agency dissemination with increased awareness and identification of 300, 601, and 602 populations within the Public Schools. Chiefly, our purpose here as both parents and members of a community is based on express policy that requires inter-agency dissemination. The Social Contract is equity in theory on ground that "prevents children from falling through the cracks" for when one falls, and there are no means of protection, society eventually reaches the same ends. A policy that ensures a bright line of separation of those minors who are the subject of an investigation, and yet to be adjudicated, is not at the mercy of hearsay and unfound conjecture; is instead made distinctly to those with the right and responsibility. Defined as those juveniles who have been adjudicated and therefore within statutory obligation of the School District's Supervisor, with discretion, and as lawful holder of record along clear uniform guidelines..	
3.	Superior Court of Los Angeles County Los Angeles, CA	AM	**Suggested Modifications:** Currently, Los Angeles County has a local form that combines the requirement to report the same information as required not only under WIC §827(b), but also under the Education Code § 48267. If new form JV-690 could include an additional box to check that there has been compliance with Ed Code § 48267, that would make the form more efficient and the local form could be replaced with JV-690**.**	The committee agrees that the form should address notice under Education Code section 48267. The form has been revised to provide a for a checklist for this notice, and additional information has been added to page to address the dissemination of the form when notice is provided under Education Code section 48267.

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

S18-26

Juvenile Law: School Notification of Delinquency Court Adjudication (Amend form JV-690)

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

	Commenter	Position	Comment	Committee Response
			Request for Specific Comments: **Would the proposal provide cost savings? If so please quantify.** There are no cost savings. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** The only impact should be replacing old copies of the local form with new form JV-690.	No response required. No response required.
4.	Superior Court of Riverside County	AM	Position on the Proposal: Agree with modifications. • Section 2 should have additional check boxes for placement and in custody (non DJJ). • Section 2-does Department of Juvenile Facilities Commitment refer to the Division of Juvenile Justice? Response to Request for Specific Comments: • In terms of the disclosure of the offense committed by the child,	The statutory reference to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), enacted under Penal Code section 6001, designates the legal title to the organization commonly referred to as "DJJ". DJF houses youth between the ages of 12 and 25 who have committed serious and/or violent felonies and require intensive treatment services conducted in a structured environment. DJF is often referred to as the DJJ (Division of Juvenile Justice), including in materials distributed by the California Department of Corrections and Rehabilitation itself. For purposes

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

	Commenter	Position	Comment	Committee Response
			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?	of this form, DJF refers to the facility and the jurisdictional body to which youth are transferred.
			We recommend that the code sections should either be listed on the form, or if listing only the generic offenses perhaps a notation that if the school needed more specific charge information that they could contact the court.	The committee considered leaving the code sections on the form, but decided that the form would be more closely aligned with section 827 and more accurate if including the code sections were optional. Section 827(b)(1) does not specify that the code section must be provided, although it does not appear to prohibit it either. The committee determined that the form should give the court the discretion to include the code section, taking into account the nature of the offense and the particular facts of each case. Leaving the code sections off the form will also make the form more accurate, as code sections may be amended in the future. In addition, it would be nearly impossible for the form to include all the criminal offenses that would be required to be reported to the school under section 827(b). In terms of the school needing more information, the form does clarify that if more information is needed the probation officer may be contacted.
			• Are there any suggestions to improve the readability and content of the admonitions on the proposed second page?	
			The content and readability of the admonitions are adequate. Anything that can be done to	No response required.

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

S18-26

Juvenile Law: School Notification of Delinquency Court Adjudication (Amend form JV-690)

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

	Commenter	Position	Comment	Committee Response
			stress the importance of following these instructions would be useful. • Would the proposal provide cost savings? No. • What would the implementation requirements be for courts? Action codes and filing processes are already in place. The courts would need to conduct training with staff on how to properly complete the updated forms particularly in regard to the charges. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work for courts of different sizes? The proposal would work well for courts of any size.	No response required. The committee hopes that the current form will provide a more simplified approach for the court. The determination on whether to include the code section of the violations should be determined by the court on a case by case basis. No response required. No response required.
5.	Superior Court of San Bernardino County	NA	I agree to revising the codes as some have been changed, also like the 2nd page which provides clear instruction for the school on how the information is disseminated for confidentiality	No response required.

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

	Commenter	Position	Comment	Committee Response
			purposes. The implementation process should be more than 3 months. It needs to be clear if the notice is sent to the school where the child was enrolled at the time of the offense or the school where the child now attends school. Due to the length of time from when the offense occurred or the expulsion of the child from that school, or if the minor attends a charter school, it needs to be clear on which school(s) receive notice. The court would need to make changes to the case management system to send notice to the correct school(s) and ensure that when the minor is released from court jurisdiction the school(s) are notified.	Item 1b of the form indicates that the child "is enrolled in your school…" The committee agrees that the form should be as specific as possible and has added the wording "currently" in front of "enrolled." The committee agrees. Courts will need to ensure that the correct school receives notice. This highlights the importance of accurate and timely reporting by probation departments.
6.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	□ *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?* Providing the code section should be optional, as proposed. 1) We have a local form for school notifications - SDSC JUV-002. 2) I like the proposed changes and leaving the code section optional. □ *Are there any suggestions to improve the readability and content of the admonitions on*	No response required.

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

	Commenter	Position	Comment	Committee Response
			the proposed second page? See comment below. The warnings are much more clear than before, but there is still a question whether it is a good use of resources to send that second page out with every single notice. It seems that courts could get that information out to schools in a more efficient way.	The committee understands that the use of a second page might create the need to use extra resources to print a second page. However, the committee believes that the form is best distributed as one two-sided document. Doing so eliminates the need to use two pieces of paper and includes the admonitions to inform the school district on how the form should be disseminated on the back of the form sent to the school district.
			□ *Would the proposal provide cost savings?* Probably negligible savings.	No response required.
			□ *What would the implementation requirements be for courts?* Print and distribute revised forms. Train staff how to use new forms. Create or revise any written internal procedures.	No response required.
			□ *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	No response required.
			□ *How well would this proposal work in courts of different sizes?* Should not be a problem.	No response required.
			<u>Form JV-690</u> **Page 2, Question 2, third bullet point.** The sentence is slightly inaccurate in paraphrasing the language in WIC § 827(b)(2)(A):	The language on page two of the form, second question, third bullet point, paraphrases the language of section 827(b)(2)(A) highlighted by the commenter. Instead of "to avoid being

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	Commenter	Position	Comment	Committee Response
			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. WIC § 827(b)(2)(A) reads: "In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil **in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability."** The following change is suggested: … 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	needlessly vulnerable or to protect other persons from needless vulnerability," the committee paraphrased this language to "promote school safety." The committee felt that paraphrasing the language in this way makes the form more readable for a lay person and concise while still conveying the same message. The committee however agrees that "and" in the sentence should be replaced with "or" to reflect the language in section 827(2)(A).

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

S18-26

Juvenile Law: School Notification of Delinquency Court Adjudication (Amend form JV-690)

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

	Commenter	Position	Comment	Committee Response
			believes they need the information to work with the child **in an appropriate fashion, to avoid being needlessly vulnerable, or ~~and~~ to promote school safety.**	

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

Item number: 25

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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 5.526, 5.678, 5.690, 5.695, and 5.708.)

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

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 requried by recent legislative changes as a result of Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); and Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262).

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 13, 2018

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory committee recommends amending five rules to delete some sections that unnecessarily repeat statutory language or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend rule 5.526 of the California Rules of Court to delete language that restates the text in Welfare and Institutions Code sections 338–341 and 661–664;

2. Amend rule 5.678 of the California Rules of Court to delete language that restates text in section 319 and replace it with references to section 319;

3. Amend Rule 5.690 of the California Rules of Court to clarify that it is governed by section 16501.1 in its entirety;

4. Amend rule 5.695 of the California Rules of Court to add a reference to the newly enacted section 361(d); and

5. Amend rule 5.708 to clarify that it is governed by section 16501.1 in its entirety, and to improve grammar and clarity;

The text of the amended rules is attached at pages 6–13.

Relevant Previous Council Action

The Judicial Council adopted rules 5.526, 5.690, and 5.695, effective January 1, 1991, as rule 1408, 1455, and 1456, respectively. Rule 5.678 was adopted effective January 1, 1998, as rule 1446. All of these rules were renumbered effective January 1, 2007. These rules have been amended numerous times, frequently to reflect amendments in the statutory text that they restate. Most notably, Rule 5.690 has been amended 5 times and Rule 5.695 has been amended 20 times.

Analysis/Rationale

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s, 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 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 committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal was spurred by recent legislation[1] 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.

[1] Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); and Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262).).

Rule 5.526. Citation to Appear; warrants of arrest; subpoenas

The committee recommends amending this rule to replace the restatements of the text in sections 338–341 and 661–664 with references to those sections.[2] (Making this change obviates the need to amend this rule to incorporate the changes made by Assembly Bill 1401 [Maienschein].)

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives

The committee recommends amending in rule 5.678:

- Subdivision (a), to delete the specific findings drawn from section 319(b) in support of detention and replace them with a reference to that section;
- Subdivision (b), to delete the factors the court must consider that are drawn from section 319(d) and replace them with a reference to that section;
- Subdivision (c)(3), to delete the findings and order that are drawn from section 319 (d)–(e) and replace them with a reference to those subsections;
- Subdivision (e), 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]); and
- Many of the subdivision headings, to remove the references to section 600 et seq. because rule 5.760, not rule 5.678, governs detention hearings for cases petitioned under section 600.

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 recommend that a cross-reference to this statute remain in the rule. 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 has been provided.

The committee further recommends 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

[2] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

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).

Rule 5.708. General Review Hearing Requirements

Similar to rule 5.695, effective January 1, 2017, the council deleted much of the text of rule 5.708 and specified that a case plan must be prepared and included with the court report as required in section 16501.1(g). For the reasons discussed above regarding rule 5.695, the committee continues to recommend that a cross-reference to this statute remain in the rule. The committee now recommends, however, that the rule reference section 16501.1 in its entirety, and not merely subdivision (g).

The committee also recommends amendments to the rule that will improve grammar and increase clarity.

Policy implications

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal was spurred by recent legislation 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.

This approach should decrease the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

Comments

This proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals. Eight organizations provided comment: two agreed with the proposal, and four agreed with the proposal if modified; no commenters opposed the proposal and two commenters did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 23–33.

The bulk of the comments received on the proposal suggested modifications to clarify the text of the amended rules and forms, correct statutory and rule references, and improve the style and clarity of the rule text. The committee adopted nearly all of these suggested modifications to improve the accessibility and effectiveness of the rules proposed to be amended.

Alternatives considered

Initially, the committee considered simply amending the existing rules of court to reflect the new statutory language but determined that it would be preferable in the long run to condense the rules by replacing unneeded text with code references to obviate the need for further amendments when these statutes are again amended.

Fiscal and Operational Impacts

Because this proposal chiefly amends rules of court to make them more concise without changing the underlying statutory requirements, it should cost the courts little, and the main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute.

One large court noted that some modifications to minute codes that are used to enter dependency hearing findings and orders would need to be made and that the court would need to contact the child welfare agency to ensure the agency is aware of the updates. Another large court commented that it, too, would have to change minute codes/findings, which would result in cost for staff to make the changes. A third large court commented that the implementation requirements would simply be to inform staff that the revisions are not substantive. The committee agrees with this commenter. Except for one new finding required by recent legislation, the required findings and orders are the same. The proposal deletes language duplicative of statute and replaces it with cross-references to the appropriate code sections.

Attachments and Links

1. Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708, at pages 6–13
2. Chart of comments, at pages 14-24
3. Link A: Assembly Bill 404 (Stats. 2017, ch. 732), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB404*
4. Link B: Assembly Bill 1332 (Stats. 2017, ch. 665), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1332*
5. Link C: Assembly Bill 1401 (Stats. 2017, ch. 262), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1401*

Rules 5.526, 5.678, 5.690, 5.695, and 5.708 of the California Rules of Court are amended, effective January 1, 2019, to read:

Rule 5.526. Citation to appear; warrants of arrest; subpoenas

(a) Citation to appear (§§ 338, 661)

In addition to the notice required under rule 5.524, the court may issue a citation directing a parent or guardian to appear at a hearing as specified in section 338 or 661.

~~(1) The citation must state that the parent or guardian may be required to participate in a counseling program, and the citation may direct the child's present caregiver to bring the child to court.~~

~~(2) The citation must be personally served at least 24 hours before the time stated for the appearance.~~

(b) Warrant of arrest (§§ 339, 662)

The court may order a warrant of arrest to issue against the parent, guardian, or present custodian of the child ~~if:~~ as specified in section 339 or 662.

~~(1) The citation cannot be served;~~

~~(2) The person served does not obey it; or~~

~~(3) The court finds that a citation will probably be ineffective.~~

(c) Protective custody or warrant of arrest for child (§§ 340, 663)

The court may order a protective custody warrant or a warrant of arrest for a child ~~if the court finds that:~~ as specified in section 340 or 663.

~~(1) The conduct and behavior of the child may endanger the health, person, welfare, or property of the child or others; or~~

~~(2) The home environment of the child may endanger the health, person, welfare, or property of the child.~~

(d) Subpoenas (§§ 341, 664)

On the court's own motion or at the request of the petitioner, child, parent, guardian, or present caregiver, the clerk must issue subpoenas ~~requiring attendance and testimony of witnesses and the production of papers at a hearing. If a witness appears in response to a subpoena, the court may order the payment of witness fees as a county charge in the amount and manner prescribed by statute.~~ as specified in section 341 or 664.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives

(a) Findings in support of detention (§ 319; 42 U.S.C. § 672 ~~§ 600 et seq.~~)

The court must order the child released from custody unless the court ~~finds that:~~ makes findings as specified in section 319(b).

~~(1) A prima facie showing has been made that the child is described by section 300;~~

~~(2) Continuance in the home of the parent or guardian is contrary to the child's welfare; and~~

~~(3) Any of the following grounds exist:~~

~~(A) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means to protect the child's physical or emotional health without removing the child from the parent's or guardian's physical custody;~~

~~(B) The child is a dependent of the juvenile court who has left a placement;~~

~~(C) The parent, guardian, or responsible relative is likely to flee the jurisdiction of the court with the child; or~~

~~(D) The child is unwilling to return home and the petitioner alleges that a person residing in the home has physically or sexually abused the child.~~

(b) Factors to consider

In determining whether to release or detain the child under (a), the court must consider the ~~following:~~ factors in section 319(d).

~~(1) Whether the child can be returned home if the court orders services to be provided, including services under section 306; and~~

~~(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.~~

(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C. § 672 ~~§ 600 et seq.~~)

(1) Whether the child is released or detained at the hearing, the court must determine whether reasonable efforts have been made to prevent or eliminate the need for removal and must make one of the following findings:

(A) Reasonable efforts have been made; or

(B) Reasonable efforts have not been made.

(2) The court must also determine whether services are available that would prevent the need for further detention.

~~(2)~~(3) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent or eliminate the need to detain the child or that would permit the child to return home.

~~(3)~~(4) If the court orders the child detained, the court must~~:~~ proceed under section 319(d)–(e).

~~(A) Determine if there are services that would permit the child to return home pending the next hearing and state the factual bases for the decision to detain the child;~~

~~(B) Specify why the initial removal was necessary; and~~

~~(C) If appropriate, order services to be provided as soon as possible to reunify the child and the child's family.~~

(d) Order~~s~~ of the court (§ 319, 42 U.S.C. § 672 ~~§ 600 et seq.~~)

If the court orders the child detained, the court must order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court~~.~~ and must make the other findings and orders specified in section 319(e) and (f)(3).

(e) Detention alternatives (§ 319)

The court may order the child detained ~~in the approved home of a relative, an emergency shelter, another suitable licensed home or facility, a place exempt from licensure if specifically designated by the court, or the approved home of a nonrelative extended family member as defined in section 362.7.~~ as specified in section 319(f).

~~(1) In determining the suitability of detention with a relative or a nonrelative extended family member, the court must consider the recommendations of the social worker based on the approval of the home of the relative or nonrelative extended family member, including the results of checks of criminal records and any prior reports of alleged child abuse.~~

~~(2) The court must order any parent and guardian present to disclose the names, residences (if known), and any identifying information of any maternal or paternal relatives of the child.~~

Rule 5.690. General conduct of disposition hearing

(a) – (b) * * *

(c) Case plan (§ 16501.1)

Whenever child welfare services are provided, the social worker must prepare a case plan.

(1) A written case plan must be completed and filed with the court by the date of disposition or within 60 calendar days of initial removal or of the in-person response required under section 16501(f) if the child has not been removed from his or her home, whichever occurs first.

(2) For a child of any age, ~~The~~ the court must consider the case plan and must find as follows:

(A) The case plan meets the requirements of section 16501.1; or

(B) The case plan does not meet the requirements of section 16501.1, in which case the court must order the agency to comply with the requirements of section 16501.1; and

~~(A)~~ (C) The social worker solicited and integrated into the case plan the input of the child~~,~~; the child's family~~,~~; the child's identified Indian tribe, including consultation with the child's tribe on whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful; and other interested parties~~,~~; or

~~(B)~~ (D) The social worker did not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties~~. If the court finds that the social worker did not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties~~, in which case the court must order that the social worker solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, unless the court finds that each of these participants was unable, unavailable, or unwilling to participate.

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must also find as follows:

(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or

(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy~~. If the court makes such a finding~~, in which case the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

~~(C) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g) the court must order the agency to comply with the requirements of section 16501.1(g).~~

Rule 5.695. Findings and orders of the court—disposition

(a) – (b) *** * ***

(c) Removal of custody—required findings (§ 361)

(1) The court may not order a dependent removed from the physical custody of a parent or guardian with whom the child resided at the time the petition was

filed, unless the court makes one or more of the findings in subdivision (c) of section 361 by clear and convincing evidence.

(2) The court may not order a dependent removed from the physical custody of a parent with whom the child did not reside at the time the petition was initiated unless the juvenile court makes both of the findings in subdivision (d) of section 361 by clear and convincing evidence.

(d) – (i) * * *

Rule 5.708. General review hearing requirements

(a) – (d) * * *

(e) Case plan (§§ 16001.9, 16501.1)

~~The court must consider the case plan submitted for the hearing and must determine~~:

The court must consider the case plan submitted for the hearing and must ~~determine~~ find as follows:

(1) The case plan meets the requirements of section 16501.1; or

(2) The case plan does not meet the requirements of section 16501.1, in which case the court must order the agency to comply with the requirements of section 16501.1; and

~~(1)~~ (3) ~~Whether~~ The child was actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement~~.~~; or

(4) The child was not actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement, ~~If the court finds the child was not appropriately involved,~~ in which case the court must order the agency to actively involve the child in the development of the case plan and plan for permanent placement, unless the court finds the child is unable, unavailable, or unwilling to participate~~.~~; and

~~(2)~~ (5) ~~Whether~~ Each parent or legal guardian was actively involved in the development of the case plan and plan for permanent placement~~.~~; or

(6) Each parent or legal guardian was not actively involved in the development of the case plan and plan for permanent placement, ~~If the court finds that any parent or guardian was not actively involved~~, in which case the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent or legal guardian is unable, unavailable, or unwilling to participate~~.~~; and

~~(3)~~(7) In the case of an Indian child, ~~whether~~ the agency consulted with the Indian child's tribe, as defined in rule 5.502, and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful~~.~~; or

(8) The agency did not consult with the Indian child's tribe, as defined in rule 5.502, and the tribe was not actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful ~~If the court finds that the agency did not consult the Indian child's tribe~~, in which case the court must order the agency to do so, unless the court finds that the tribe is unable, unavailable, or unwilling to participate~~.~~; and

~~(4)~~(9) For a child 12 years of age or older in a permanent placement, ~~whether~~ the child was given the opportunity to review the case plan, sign it, and receive a copy~~.~~: or

(10) The child was not given the opportunity to review the case plan, sign it, and receive a copy, ~~If the court finds that the child was not given this opportunity~~ in which case the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

~~(5) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g), the court must order the agency to comply with the requirements of section 16501.1(g).~~

(f) – (i) * * *

(j) Appeal of order setting section 366.26 hearing

An appeal of any order setting a hearing under section 366.26 is subject to the limitation stated in subdivision (*l*) of section 366.26 and must follow the procedures in rules 8.400–8.416.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch Director of Governmental Affairs	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal, but has one the comment. The repeal of rule 5.526 may inadvertently remove a rule designed to support Welfare and Institutions Code sections 661-664. AB 1401 did not change those code sections in any way, and there is no mention in the proposal that those sections (Welfare and Institutions Code sections 661-664) likewise are not clarified by rule 5.526.	Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections.
2.	Orange County Bar Association By: Nikki P. Miliband President	AM	The proposal appropriately addresses the stated purpose to condense the rules of court and prevent the need to frequently amend the rules to conform to the changing statutes. The statutory language in Rule 5.678(c)(3) should remain as it guides the court's orders and the obligations of a social services agency that ultimately flow from those orders. Additional statutory language does not need to be deleted.	No response required. The committee has amended the rule to maintain 5.678(c)(3) but has replaced the language repetitive of statute with a reference to section 319(d). No response required.
3.	San Diego County Counsel By: Caitlin Rae Deputy	AM	Rule 5.690 section (c) case plan 16501.1, (2) (A)-(D) is confusing. It should be reorganized to clearly state A or B and C or D. Rule 5.708 section (e) case plan is confusing. It should be reorganized to clearly state 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8 and 9 or 10. The way it is written and outlined is too difficult to understand.	The committee will ask the editor of this proposal to pay particular attention to any way these rules could be in more of a list format, while maintaining the requirement that the court order the agency to comply with the code sections.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County	AM	**Suggested Modifications:** Instead of formally repealing Rule 5.526 and outright deleting subsection (c)(3) of Rule 5.678, replace them with a cross reference to their corresponding WIC section(s). Replace Rule 5.526 with cross references to WIC 338-341, and replace subsection (c)(3) with a cross reference to WIC 319(e). **Request for Specific Comments:** Does the proposal appropriately address the stated purpose? *Yes. It reduces the lag time in updating rules to statutory amendments, while also allowing for a uniform statement of the Welfare and Institutions Code sections. The affected Rules of Court state their proposition differently than corresponding WIC sections; one uniform statement of the law is easier for practitioners.* Are there statutory provisions that were deleted that should remain? *See suggested modifications above.* Are there additional statutory provisions that should be deleted? *No.*	Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections. The content of rule 5.678(c)(3) remains. No response required. See committee response above. No response required.
5.	Superior Court of Orange County Juvenile and Family Court Divisions	NI	Does this proposal appropriately address the stated purpose? *Yes* Are there statutory provisions that were deleted that should remain?	No response required.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
			No Are there additional statutory provisions that should be deleted? *No*	No response required. No response required.
6.	Superior Court of Riverside County By: Susan D. Ryan Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? *Yes.* Are there any statutory provisions that were deleted that should remain? *No.* Are there any additional statutory provisions that should be deleted? *None that we are aware of.* Would the proposal provide cost savings? *No.* What would the implementation requirements be for courts? *Some modifications to minute codes that are used to enter dependency findings. Contact Child Protective Services to make certain they are aware of these updates.* Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes.*	No response required. No response required. No response required. No response required. No response required. No response required.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
			How well would this proposal work for courts of different sizes? *The proposal should work well for courts of any size.*	No response required.
7.	Superior Court of San Bernardino County	NI	Does the proposal appropriately address the stated purpose? *Yes* Are there statutory provisions that were deleted that should remain? *No* Are there additional statutory provisions that should be deleted? *No* The court would need to change minute codes/findings and orders to reflect the changes in the case management system and this would be a cost issue in regards to the staff hours for making the changes. This implementation period should be at least 6 months or longer.	No response required. No response required. No response required. The required findings and orders are the same. The proposal deletes language duplicative of statute and replaces it with cross references to the appropriate code sections.
8.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	Does the proposal appropriately address the stated purpose? *Yes.* Are there statutory provisions that were deleted that should remain? *No.* Are there additional statutory provisions that should be deleted? *See comments below.*	No response required. No response required. See response below.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? *Probably negligible savings.*	No response required.
			What would the implementation requirements be for courts? *Inform staff that revisions are not substantive.*	No response required.
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes.*	No response required.
			How well would this proposal work in courts of different sizes? *Should not be a problem.*	No response required.
			General Comments: **Rule 5.526** Agree with repeal.	Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections.
			Rule 5.678 **Subd. (c) heading**: "§ 600 et seq." is stricken out but not replaced with anything. It should be replaced with "§ 670 et seq." **(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C.~~§ 600 et seq.~~ § 670 et seq.)**	This rule applies to cases under section 300 et. seq, not delinquency cases under section 600 et. seq.

SPR18-27
Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Subd. (c): Query – If the restatement of § 319(d)(1) (reasonable efforts finding) is to be left in the rule, shouldn't the other finding required by § 319(d)(1) (available services) be in this part of the rule as well? The phrase "after inquiry regarding available services," currently in subd. (c)(2), may not be sufficient to ensure that the court makes a finding on the record as to available services. A suggested change is below. (1) Whether the child is released or detained at the hearing, the court must determine whether reasonable efforts have been made to prevent or eliminate the need for removal and must make one of the following findings: (A) Reasonable efforts have been made; or (B) Reasonable efforts have not been made. (2) The court also must determine whether there are available services that would prevent the need for further detention. ~~(2)~~(3) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent or eliminate	The committee has amended the rule to require a finding whether there are available services that would prevent the need for removal.

	Commenter	Position	Comment	Committee Response
			the need to detain the child or that would permit the child to return home. **Subd. (d) heading**: "§ 600 et seq." is stricken out but not replaced with anything. It should be replaced with "§ 670 et seq." Also suggest making "Order" plural. **(d) Orders of the court (§ 319, 42 U.S.C.~~§ 600 et seq.~~ § 670 et seq.)** **Subd. (d):** As it currently reads, subd. (d) does not include all that is required from the court by § 319(e) – i.e., state factual basis, state reason for initial removal, reference evidence relied upon, order services, order parent to disclose relatives' information. If the court orders the child detained, the court must ~~order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court~~ make the findings and orders specified in section 319(e) and (f)(3). **Rule 5.690** **Subd. (c)(2):** Insert comma. For a child of any age, the court must consider the case plan and must find as follows:	This rule applies to cases under section 300 et. seq, not delinquency cases under section 600 et. seq. The committee has amended the rule to contain a reference to section 319(e) and (f)(3). The committee is not deleting from the rule the language regarding temporary care and custody, as that order is necessary to secure title IV-E funding. The committee has amended the rule to improve grammar and readability.

	Commenter	Position	Comment	Committee Response
			Subd. (c)(3): Query – Are not these findings subsumed under the findings described in subd. (c)(2)(A) & (B)? That is, meeting the requirements of § 16501.1 includes giving a child 12 or older and in a permanent placement the opportunity to review the case plan, sign it, and receive a copy. On the other hand, if subd. (c)(3) is kept in the rule because of the age limitation, then should not the rule also specify the findings required by § 16501.1, subd. (g)(12)(A) [NMD], subd. (g)(15)(C) [16 or older and in APPLA], subd. (g)(16)(A)(i) [14 or 15], subd. (g)(16)(A)(ii) [16 or older or NMD], subd. (g)(16)(B) [almost 18], subd. (g)(16)(C) [14 or older], subd. (g)(17) & (18) [14 or older or NMD], subd. (g)(20) & (21) [10 or older or NMD], subd. (g)(22) [16 or older or NMD], subd. (j) [10 or older, in placement 6 months or longer]?	Given the importance of providing the child a copy of his or her case plan, the committee is leaving this requirement in the rule.
			Rule 5.695 **Subd. (c)(2):** WIC § 361(d) requires both of the two findings set forth therein, not just one or the other.[1] (2) The court may not order a dependent removed from the physical custody of a	The committee has amended the rule to require that both findings need to be made as required under section 361(d).

[1] WIC § 361(d) reads: "A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, **and** there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody." (Emphases added.)

	Commenter	Position	Comment	Committee Response
			parent with whom the child did not reside at the time the petition was initiated unless the juvenile court makes ~~one~~ both of the findings in subdivision (d) of section 361 by clear and convincing evidence. **Subd. (g)(5)(A)**: Change subdivision citation. Order that the social worker provide a copy of the child's birth certificate to the caregiver consistent with sections 16010.4~~(e)~~(d)(5) and 16010.5(b)–(c); and **Subd. (g)(5)(A)** – Alternative suggestion: Delete subdivision references. (See, e.g., WIC § 361.5(j).) 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 **Rule 5.708** **Subd. (e)(3) & (4):** Query – Are not these findings subsumed under the findings described in subd. (e)(1) & (2)? That is, meeting the requirements of § 16501.1 includes actively involving a child in the development of the case plan and plan for permanent placement as age-	In the spirit of the proposal, the committee has changed the citation without use of subdivisions. This should prevent this rule from needing to be amended again should the code sections be amended and subdivisions re-lettered. Given the importance of actively involving children and parents in the development of the case plan, the committee is leaving these requirements in the rule.

	Commenter	Position	Comment	Committee Response
			and developmentally appropriate. (WIC § 16501.1(g)(1).) **Subd. (e)(5) & (6):** Query – Are these findings actually required by statute? WIC § 16501.1(g)(12)(A) reads, in pertinent part, "*Whenever possible*, parents and legal guardians shall participate in the development of the case plan." (Emphasis added.) Furthermore, assuming the findings are required, are not they subsumed under the findings described in subd. (e)(1) & (2)? **Subd. (e)(6):** Insert "or legal guardian." Each parent or legal guardian was not actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent or legal guardian is unable, unavailable, or unwilling to participate.; and **Subd. (e)(9) & (10):** See query, *ante*, for subd. (c)(3) of Rule 5.695. **Subd. (j)**: Revise as indicated.	The committee has amended the rule to include legal guardians. See response above.

SPR18-27

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708)

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

	Commenter	Position	Comment	Committee Response
			An appeal of any order setting a hearing under section 366.26 is subject to the limitation set forth in subdivision (*l*) of section 366.26 and must follow the procedures in rules 8.400–8.416.	The committee has amended the rule to include a reference to subdivision *l* of section 366.26.

Item number:26

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 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

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 requried by recent legislative changes as a result of Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 605)

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Juvenile Law: Intercounty Placements

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 14, 2018

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of the California Rules of Court, repealing and adopting one rule, and approving two Judicial Council forms to conform to recent statutory changes regarding who a child welfare agency must notice when moving a foster child to a different county.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend rule 5.610(c) of the California Rules of Court to delete the specific findings drawn from sections 375 and 750 and replace them with cross-references to those code sections;

2. Repeal rule 5.614 of the California Rules of Court because it simply restates the text in sections 380 and 755;

3. Adopt rule 5.614 of the California Rules of Court governing intercounty placements;

4. Approve *Notice of Intent to Place Child Out of County* (form JV-555) for optional use; and

5. Approve O*bjection to Out-of-County Placement and Notice of Hearing* (form JV-556) for optional use.

The text of the amended rules and the new forms are attached at pages 7–15.

Relevant Previous Council Action

The Judicial Council adopted what are now rules 5.610 and 5.614, effective January 1, 1990 as rules 1425 and 1427 respectively. Both rules were renumbered effective January 1, 2007. Rule 5.610 has been amended four times to reflect amendments in the statutory text that it restates.

Analysis/Rationale

Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 605) amends Welfare and Institutions Code section 361.2[1] to require 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 to allow for the child and child's attorney to object to the move. To that end, the committee recommends rule 5.610 be amended and rule 5.614 be repealed and adopted to ensure that they conform to the requirements in Welfare and Institutions Code section 361.2(h) and to provide court process for notice of, and objection to, an out-of-county placement.

The committee also recommends removing any language that is repetitive of statute. Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s, 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.

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

Rule 5.614. Intercounty placements

The committee recommends replacing rule 5.614 with a rule governing intercounty placements. The streamlined rule cross-references section 361.2(h), obviating the need to amend the rule again if this code section is amended in the future. The rule also identifies the optional forms that can be used for notice and objection.

Notice. Although section 361.2(h) requires that notice of the agency's intent 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, section 361.2(h) 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. The committee recommends that rule 5.614 include notice to these two additional participants.

Federal and state law protect the relationship between an Indian child and the child's tribe.[2] In particular, the law requires that whenever an Indian child is removed from his or her home for placement or further placement is made, the placement must comply with the placement preferences of the Indian Child Welfare Act.[3] Furthermore, the child's tribe must be consulted on any placement or change in placement.[4] A child's identified Indian tribe is entitled to receive notice of every hearing in a dependency case.[5]

Because of 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.[6] Given the potentially life-changing importance of an out-of-county placement, the CASA volunteer should receive notice of the agency's request to place the child out-of-county, just as the volunteer receives notice of other important court events regarding the child.

The committee recommends that the Judicial Council approve two optional forms for use to notice and object to a planned out-of-county placement. One benefit to 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, he or she may request a court hearing.

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." The committee recommends that rule 5.614 clarify that the agency must show by a preponderance of the evidence that the standard in section 361.2(h) is met.

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[2] 25 U.S.C. §§ 1901–1903; Welf. & Inst. Code, § 224.
[3] 25 U.S.C. § 1915; 25 C.F.R. §§ 23.129–23.132 (2018); Welf. & Inst. Code, §§ 224(b), 361.31.
[4] Welf & Inst. Code, § 361.31(g).
[5] Welf. & Inst. Code § 224.2(b).
[6] Cal. Rules of Court, rules 5.708, 5.725, 5.726, 5.728, 5.730, 5.740.

Policy implications

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal, in addition to providing procedural guidance for proposed out-of-county placements, amends the rules of court to include statutory references rather than a paraphrase of the full statutory text.

This approach should decrease the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

Comments

This proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Ten organizations provided comment: two agreed with the proposal, five agreed with the proposal if modified, no commenters opposed the proposal, and three did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 16–34.

Notice to CASA program. The committee sought specific comment on whether the child's CASA program should receive notice of the agency's intent to move the child. As circulated for public comment, the rule required notice to the CASA program and listed the CASA program as a participant that could object to the move and thereby cause a hearing to be set.[7] Of the four commenters who addressed this question, only one disagreed with the CASA program receiving notice. Two of the commenters agreed that the CASA should receive notice, but should not be allowed to object and thereby cause a hearing to be set.

The committee recommends that the rule maintain the requirement to provide notice to the child's CASA program, but that the child's CASA program be removed from the list of participants that can object to the proposed placement and thereby cause a hearing to be set. In all instances where the CASA program receives notice of a court hearing, the CASA program is not a party and therefore cannot request a contested hearing on the agency's recommendation.

Notice of Hearing. 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 was to have the party requesting the hearing provide notice. This option caused concern because children are unlikely to have the necessary procedural knowledge.

[7] A hearing on an objection to a proposed out-of-county placement is automatic per statute. (§ 361.2(h).)

As circulated for public comment, the proposed rule took a hybrid approach. It required 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 was to ensure proper notice and somewhat reduce the burden this new procedure places on court clerks.

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. The committee sought specific comment on whether this hybrid approach would put too much of a burden on the clerk or whether it would somewhat lessen the burden of notice on the clerk. Several commenters stated that the clerk should serve notice of the hearing on all requests. Several commenters stated that the hybrid approach would lessen the burden of service on the clerk. One commenter suggested that although the hybrid approach seemed like a decent compromise, the procedure for notice in section 827 petitions should be used and the court clerk should be responsible for notice only if the petitioner does not know the identity or address of a party who is required to be served.

The committee considered and discussed all these options and ultimately decided that the hybrid approach evenly distributed the workload of notice of a hearing and would lessen the clerk's workload.

Alternatives considered

In addition to the alternatives considered in response to the public comments, when AB 1688 was passed, the committee originally determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. However, both the California Department of Social Services and a large law office representing children have since asked Judicial Council staff to create forms for both the notice of and the 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. Members questioned whether the forms were necessary. Ultimately, the committee decided to circulate the forms for public comment and sought specific comment on whether the forms would be helpful. All the commenters who answered this specific question stated that the forms would be helpful. One large county requested that the forms be optional because its department had already developed a form for this purpose. The committee recommends that both forms be approved for optional use so that counties that have developed their own local forms be able to continue to use them.

Fiscal and Operational Impacts

The recommended rule amendments and forms are intended to implement statutes that became effective January 1, 2017.Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload.

Similarly, the written notice requirements to parents and guardians have been in place for many years and those to the child's attorney and the child aged 10 or older have been in place since January 1, 2017; therefor this recommendation should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

One large court commented that implementation of the notices would result in minimal operational impacts to the juvenile court and that training for sending notifications would be necessary but minimal in terms of costs. Another large court commented that staff training and changes to its case management system would be required and that procedures would also have to be developed. A third large court commented that staff of the clerk's office would need to be trained on how to process these types of documents and when to give notice; procedures would need to be created; and codes would need to be created in the case management system for processing the documents. Another large court commented that procedures would need to be updated and training conducted for staff regarding the new forms and noticing requirements and that these changes may affect the Intercounty Transfer Protocol that the Southern California region uses. A fifth large court commented that the implementation requirements would be training staff, advising attorneys that optional forms are available, and drafting or changing docket codes.

Of the courts that commented on whether the proposal would provide cost savings, one commented "No," one commented "unknown," and two commented that there would be "minimal" costs to the court.

Attachments and Links

1. Cal. Rules of Court, rules 5.610 and 5.614, attached at pages 7–10
2. Forms JV-555 and JV-556, at pages 11–15
3. Chart of comments, at pages 16–34
4. Link A: Assembly Bill 1688 (Stats 2016, ch. 605), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1688*

Rule 5.610 of the California Rules of Court is amended, and rule 5.614 is repealed and adopted, effective January 1, 2019, to read:

Chapter 7. Intercounty Transfers and Placements; Interstate Compact on the Placement of Children

Rule 5.610. Transfer-out hearing

(a) Determination of residence—special rule on intercounty transfers (§§ 375, 750)

(1) For purposes of rules 5.610~~, and~~ 5.612, and 5.614, the residence of the child is the residence of the person who has the legal right to physical custody of the child according to prior court order, including:

(A) A juvenile court order under section 361.2; and

(B) An order appointing a guardian of the person of the child.

(2)–(4) * * *

(b) * * *

(c) Transfer to county of child's residence (§§ 375, 750)

(1) After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the child's residence ~~if:~~ as specified in section 375 or section 750.

~~(A) The petition was filed in a county other than that of the child's residence; or~~

~~(B) The child's residence was changed to another county after the petition was filed.~~

(2) If the court decides to transfer a delinquency case, the court must order the transfer before beginning the disposition hearing without adjudging the child to be a ward.

(3) If the court decides to transfer a dependency case, the court may order the transfer before or after the disposition hearing.

(d)–(j) * * *

~~**Rule 5.614. Courtesy supervision (§§ 380, 755)**~~

~~The court may authorize a child placed on probation, a ward, or a dependent child to live in another county and to be placed under the supervision of the other county's county welfare agency or probation department with the consent of the agency or department. The court in the county ordering placement retains jurisdiction over the child.~~

Rule 5.614. Intercounty Placements

(a) Procedure

Whenever a social worker intends to place a dependent child outside the child's county of residence, the procedures in section 361.2(h) must be followed.

(b) Participants to be served with notice

Unless the requirements for emergency placement in section 361.4 are met, before placing a child out of county, the agency must notify the following participants of the proposed removal:

(1) The participants listed in section 361.2(h);

(2) The Indian child's identified Indian tribe, if any;

(3) The Indian child's Indian custodian, if any; and

(4) The child's CASA program, if any.

(c) Form of notice

The social worker may provide the required written notice to the participants in (b) on *Notice of Intent to Place Child Out of County* (form JV-555). If form JV-555 is used, the social worker must also provide a blank copy of *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556).

(d) Method of Service

The agency must serve notice of its intent to place the child out of county as follows:

(1) Notice must be served by either first-class mail, sent to the last known address of the person to be noticed; electronic service in accordance with section 212.5 of the Welfare and Institutions Code; or personal service at least 14 days before the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given;

(2) Notice to the child's identified Indian tribe and Indian custodian must comply with the requirements of section 224.2; and

(3) *Proof of Notice* (form JV-326) must be filed with the court before any hearing on the proposed out-of-county placement.

(e) Objection to proposed out-of-county placement

Each participant who receives notice under (b)(1)–(3) may object to the proposed removal of the child, and the court must set a hearing as required by section 361.2(h).

(1) An objection to the proposed intercounty placement may be made by using *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556).

(2) An objection must be filed no later than seven days after receipt of the notice.

(f) Notice of hearing on proposed removal

If an objection is filed, the clerk must set a hearing, and notice of the hearing must be as follows:

(1) If the party objecting to the removal is not represented by counsel, the clerk must provide notice of the hearing to the agency and the participants listed in (b);

(2) If the party objecting to the removal is represented by counsel, that counsel must provide notice of the hearing to the agency and the participants listed in (b);

(3) Notice must be by either first-class mail, sent to the last known address of the person to be noticed; electronic service in accordance with section 212.5 of the Welfare and Institutions Code; or personal service; and

(4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(g) Burden of proof

At a hearing on an out-of-county placement, the agency intending to move the child must prove by a preponderance of the evidence that the standard in section 361.2(h) is met.

(h) Emergency placements

If the requirements for emergency placement in section 361.4 are met, the agency must provide notice as required in section 16010.6.

JV-555 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 and Notice of Hearing, *and must be provided 14 days before the proposed date of placement.*

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 To:

a. Parent or guardian *(name):*

b. Parent or guardian *(name):*

c. Parent's attorney, if any *(name):*

d. Parent's attorney, if any *(name):*

e. Child's attorney *(name):*

f. Child, if 10 years of age or older *(name):*

g. Child's identified Indian tribe, if any *(name):*

h. Child's Indian custodian, if any *(name):*

i. Child's Court Appointed Special Advocate (CASA) program, if any *(name of person notified):*

2 Name of agency proposing move:

Address:

Phone number:

The agency intends to place the child out of county. The reasons why placement must be outside of the county are:

If you need more space, attach a sheet of paper and write "JV-555, Item 2—Reasons for Out-of-County Placement" at the top.

Number of pages attached: _____

3 **If you do not agree with the out-of-county placement, you may request a court hearing.** To do so, you can fill out form JV-556, ***Objection to Out-of-County Placement and Notice of Hearing***, and file it with the court within **seven days** after 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*

JV-556 Objection to Out-of-County Placement and Notice of Hearing

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 of the child, you can request a court hearing by filling out this form. The following people can object to the placement: the child's parent or guardian, the child's attorney, the child (if 10 years of age or older), and the child's identified Indian tribe or custodian. After you complete and sign this form, bring it 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

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's parent
☐ child's identified Indian tribe ☐ child's Indian custodian
☐ parent's attorney

_____

c. ☐ Confidential address

d. Address: _____

_____

2 Notice of court hearing

A court hearing is scheduled on the objection to out-of-county placement.

Hearing Date & Time → Date: Time:
Dept.: Room:

Name and address of court if different from above:

3 ☐ Parent or guardian *(name & address):* _____

_____

☐ Confidential address in court file

4 ☐ Parent or guardian *(name & address):* _____

_____

☐ Confidential address in court file

5 ☐ Parent or guardian's attorney *(name & address):* _____

_____

6 ☐ Parent or guardian's attorney *(name & address):* _____

_____

7 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:

8 ☐ The child is 10 years of age or older. Child's address: _____
☐ Confidential address in court file

9 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Address of CASA program, if known: _____

10 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Address of tribe: _____

11 ☐ The child has an Indian custodian *(name):* _____
Address of custodian, if known: _____

12 The agency should not place the child outside the county because *(give reasons):*

If you need more space, attach a sheet of paper and write "JV-556, Item 12—Reasons Not to Place the Child Outside the County" at the top.

Number of pages attached: _____

Child's name: _____

Case Number:

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* for a *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

SPR 18-28

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)
Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch | Director of Governmental Affairs *San Francisco, CA*	AM	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal, with changes. We believe the proposal is generally sound. It expounds on the existing legal framework for a court's handling of placement changes that will result in a dependent child living outside the county of jurisdiction. Having rules to govern notice and an opportunity to be heard when this type of placement is at issue is critical. The changes we ask for are as follows: a. Proposed rule 5.614(d) dictates the requirements for service of notice that are placed upon the child welfare agency prior to making the placement change. Subparagraph (1) allows for service to be made either by first class mail or personal service. However, it does not explicitly provide for electronic service. Given the movement being made across the state toward electronic filing and paperless case management, we believe electronic service should be allowed b. Proposed rule 5.614(f) would govern notice of a hearing on the proposed removal. Subparagraph (2) would place upon a party the burden of providing notice of the hearing, if that party is represented by counsel. We believe the requirement for providing notice should fall upon the clerk of the court, regardless of whether the party is represented by counsel. The narrative information accompanying the proposal	a. The committee has amended the rule to allow for electronic service of notice. b. The committee considered and discussed this option and ultimately decided that the "hybrid" approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk's workload.

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	Commenter	Position	Comment	Committee Response
			suggests the recommendation is being made due to workload concerns expressed by both the courts and child welfare agencies. But workload concerns have also been expressed by law offices. In particular, placing this type of requirement on law offices at a time when half the counties across the state are experiencing significant reductions in their ability to fund court-appointed counsel is especially onerous. Further, rule 5.570 governing petitions to modify prior court orders requires the court clerk to provide notice of a hearing on all such requests, regardless of whether a party is represented by counsel. We see no reason to make a distinction with a request for hearing on a proposed intercounty placement move. c. Proposed rule 5.614(f) also sets forth the methods for providing notice. Similar to the point we make in connection with proposed rule 5.614(d), it allows only for service by first class mail or personal service. For the reasons stated above, we believe electronic service should be authorized under this rule.	c. The committee has amended the rule to allow for electronic service of notice.
2.	Orange County Bar Association By: Nikki P. Miliband President Newport Beach, CA	AM	The proposal addresses the stated purpose of facilitating compliance with Section 362.1(h) and allowing an opportunity to object to a proposed out-of-county placement. The JV-555 and JV-556 forms help provide guidance. However, the JV-555 should include	No response required. The committee has revised form JV-555 to include that notice must be provided 14 days before the proposed date of placement.

SPR 18-28

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)
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	Commenter	Position	Comment	Committee Response
			that the notice must be provided 14 days prior to the proposed date of placement.	
3.	Orange County Social Services Agency By: Martin Raya Administrative Manager I		"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?" No, as this exceeds the requirement of WIC § 361.2(h) and consequently adds an undue burden to the Placing Agency. Additional thoughts/considerations: • Since CASAs do not have an assigned attorney, what is the recourse if a CASA disagrees with placement and a hearing is calendared? How is CASA objecting to placement legally actionable; do they have this authority? • Under the proposed noticing protocol suggested in SPR 18-28, the court clerk would be impacted to provide notice for all CASA-related objections, due to the CASA being the only involved party without an attorney. • In our experience, there is a correlation between youth assigned a CASA and youth being difficult-to-place, making out-of-county placements more likely for this population, which contributes to a concern over: the workload of noticing CASAs; the potential limiting of available placements (out-of-county options); further delays in expediting placement (particularly when we	The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.

	Commenter	Position	Comment	Committee Response
			have youth we are trying to transition out of shelter care facilities within 10 days). • This addition could create an additional barrier to expediting out-of-county placement, when we do not have sufficient capacity in-county to accommodate: placement of special medical children; placement of sibling sets (of 3 or more); placement of children with complex needs (e.g., medical and behavioral needs, etc.) "Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient?" • We have already developed county specific forms to notice parties of out-of-county placements. Would these forms be mandatory, for county use? • Mandatory use of the JV forms would eliminate the option of combining forms to meet the requirements of out-of-county notice and presumptive transfer of specialty mental health services. • JV-556: We have concern regarding CASA being able to legally object to an out-of-county placement and request a hearing, as this could create an additional barrier to expediting placement. • JV-556, item #7: Suggest replacing "social worker" with "Placing Agency" or "Child Welfare Agency" or similar language.	The committee is recommending that these forms be adopted as optional forms. This would allow parties to continue to use local forms. The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement. The committee has revised the form to replace "social worker" with "agency".

SPR 18-28

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	Commenter	Position	Comment	Committee Response
			Many counties have placement and case-carrying social workers, making the term "social worker" vague.	
4.	San Diego County Counsel By: Caitlin Rae Deputy	AM	Rule 5.614 section (b)(2) should be modified to say "An Indian child's identified Indian tribe, if any." The agency should only need to notice an Indian tribe for an Indian child. In some cases, the child is not Indian (under ICWA definitions) but may have some connection to a tribe. In those cases, the tribe does not have standing to object to the out of county transfer. The tribe only has standing to object in cases where the child has been defined as an Indian child for ICWA purposes.	The committee has amended the rule at (b)(2) and (b)(3) to specify that the notice requirements apply to an Indian child.
5.	Superior Court of Los Angeles By: Sandra Pigati-Pizano Management Analyst Los Angeles, CA	A	The implementation of the notices will result in minimal operational impacts to the Juvenile Dependency and Delinquency court. Training for sending notifications will be necessary but minimal in terms of costs.	No response required.
6.	Superior Court of Orange County By: Cynthia Beltran Administrative Analyst		Does the proposal appropriately address the stated purpose? *Yes* 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? *CASA should be noticed as a courtesy, but they do not have the right to set a contested hearing and should not be allowed to file an objection. An objection would require a hearing to be set.*	No response required. The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.

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	Commenter	Position	Comment	Committee Response
			Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? *The forms somewhat provides guidance and consistency. If more than one child per family is being placed out of county, is the intent to file one form (JV-555) per child? From a practical standpoint, SSA would likely file one form if the children are part of the same family.*	Counties should use the forms in the way that is easiest for their case management system.
			It is also missing notice to the parent's attorneys (if any).	The committee has revised the form to include notice to the parents' attorneys, if any.
			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? *Yes, it would be easier to send all notices so a clerk doesn't have to make a decision on who should provide notice. Additionally, if the attorney fails to properly serve notice, what happens? It's safer not to delay the placement longer than necessary and require the court to serve notice using a form other than the JV-326. This form does not have an option for a hearing re: Out of County Placement. Also in regards to notice, does the objection have to be served upon the agency requesting out of county placement?*	The committee considered and discussed several options and ultimately decided that the "hybrid" approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk's workload.

SPR 18-28

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)
Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? *No, it will require additional time and supplies (printing/postage) to process. However, the volume is not expected to be high and the cost to implement is likely to be minimal.*	No response required.
			What would the implementation requirements be for courts? *Staff training and changes to our case management system would be required. Procedures would also have to be developed. Approximately three months would be needed to implement.*	No response required.
			Would two months from JCC approval be sufficient? *We request minimum of 3 months to ensure CMS program changes are tested and complete.*	All other courts responded that two months was sufficient.
			JV-555 ▪ *Section #3 should bold the seven day reference to clearly notify the party there is a timeframe to file an objection.*	The committee has revised the form to bold the seven day reference.
			▪ *Language should be added to notify that party objecting that they will be required to attend a hearing.*	The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.
			JV-556 ▪ *The title should include "Request for Hearing" as the filing of the objection will require a hearing.*	The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.

	Commenter	Position	Comment	Committee Response
			▪ *Remove reference to the child's CASA being able to object to out-of-county placement.*	The committee has revised form JV-556 to remove the reference to the child's CASA being able to object to the proposed placement.
			▪ *Add a section to insert hearing date.*	The committee has revised form JV-556 to include a box for hearing date, time, and location.
			▪ *Is it necessary for the person objecting to the placement to write out their reason if a hearing will be held?*	The committee has maintained the space to write out the reason the person is objecting to the place to put everyone on notice of what the hearing is about.
			▪ *Why is the phone number field necessary for the child, CASA, Indian Tribe, and Indian Custodian necessary? We do not provide notice via telephone.*	The committee has revised the form to remove the request for telephone numbers.
7.	Superior Court of Riverside County By: Susan D. Ryan Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? *Yes.*	No response required.
			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 county? *Yes.*	No response required.
			Are the forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? *Yes.*	No response required.
			The "hybrid" notice approach requires that the clerk determine whether the person objecting	No response required.

	Commenter	Position	Comment	Committee Response
			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? *No.* Will the "hybrid" notice approach help to somewhat lessen the burden of notice on the clerk? *Yes.* Would the proposal provide cost savings? *No.* What would the implementation requirements be for courts? *Clerk's office staff would need to be trained on how to process these types of documents and when to give notice. Procedures would need to be created. Codes would need to be created in the case management system for processing the documents.* Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes.* How well would this proposal work for courts of different sizes? *The proposals should work well for courts of any size.*	No response required. No response required. No response required. No response required. No response required.
8.	Superior Court of San Bernardino County		The impact would fall on the child welfare agency as they must notice the minor when	The recommended rule amendments and forms are intended to implement statutes that became

	Commenter	Position	Comment	Committee Response
			moving them from foster care to a different county, including the notice to all parties. It could also impact the court if we start receiving objections and will then requires additional court time and hearings would have to be set.	effective January 1, 2017.Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload. 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.
			Does the proposal appropriately address the stated purpose? *Yes*	No response required.
			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? *Yes*	The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.
			Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? *Forms are helpful*	No response required.
			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?	The committee considered and discussed several options and ultimately decided that the "hybrid" approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not

	Commenter	Position	Comment	Committee Response
			Yes	represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk's workload.
			Will the "hybrid" notice approach help to somewhat lessen the burden of notice on the clerk? *Yes Somewhat. If CFS is moving a child(ren) from one placement to another, they submit a "Change of Placement Packet" and should send notice to the appropriate parties. The packet may contain that the child(ren)'s address is in a confidential placement, therefore, the court would not know if they are moved to a different county. CFS should be responsible for sending notice to the parties as required by law when submitting a "Change of Placement", and the court clerk can send notice when an "Objection to Out of County Placement" when it is filed with the court.*	See committee response above
			The additional parties that are notified could potentially raise the amount of court hearings, as CASA and the minor(s) could oppose the change in placement.	The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.
			Please clarify the amount of days prior to the court hearing that the "Proof of Notice Form JV -326) must be filed with the court.	The committee has amended the rule to indicate the Proof of Notice must be filed before *any* hearing on the proposed out-of-county placement.

SPR 18-28

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)
Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
				The committee is not setting a deadline for filing form JV-326 to allow courts the most flexibility in hearing the matter.
			Procedures will need to be updated and training conducted for staff regarding the new forms and noticing requirements. In addition, these changes may impact the Inter-County Transfer Protocol that the Southern California Region uses, based on the Rule changes and/or forms.	The recommended rule amendments and forms are intended to implement statutes that became effective January 1, 2017.Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload.. 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.
9.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	Does the proposal appropriately address the stated purpose? *Yes.*	No response required.
			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? *Yes. The child's tribe and CASA should be given notice.*	The committee has maintained the requirement to provide notice to the child's CASA program and Indian tribe, but has removed the child's CASA program from the list of participants that can object to the proposed placement.
			What about electronic service? (See SPR 18-25.)	The committee has amended the rule to allow for electronic service of notice.

SPR 18-28

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)
Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
			Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient? *The forms are helpful and should be made available.*	No response required.
			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? *Perhaps, but it is mitigated by requiring counsel for the objecting party to serve notice.*	The committee considered and discussed several options and ultimately decided that the "hybrid" approach--where if a person objecting is represented by counsel, counsel serves notice of the hearing and if the person objecting is not represented by counsel, the clerk serves notice of the hearing--evenly distributed the workload of such notice and would lessen the clerk's workload.
			Will the "hybrid" notice approach help to somewhat lessen the burden of notice on the clerk? *Yes, but should rule 5.614(f) be revised to require service of notice by an objecting party that is a tribe, Indian custodian, or CASA program, thereby relieving the court clerk of the burden of notice in such cases?*	See committee response above.
			The hybrid notice proposal seems like a decent compromise but would increase workload for court staff. Our court's Juvenile Court Administration suggested that the procedure for notice of WIC 827 petitions in CRC 5.552(c) would be better. Under that procedure, the court clerk is only responsible for notice if the	See committee response above.

	Commenter	Position	Comment	Committee Response
			petitioner does not know the identity or address of a party who is required to be served. Would the proposal provide cost savings? If so, please quantify. *Unknown.* What would the implementation requirements be for courts? *Training staff, advising attorneys that optional forms are available, and drafting or changing docket codes.* Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes.* How well would this proposal work in courts of different sizes? *It might be more burdensome in for courts that have higher numbers of unrepresented parties.* <u>General Comments:</u> **<u>Rule 5.614</u>** Rule 5.614(a) should say "dependent child", as WIC 361.2 applies only in dependency cases. **<u>(a) Procedure</u>**	No response required. No response required. No response required. The committee has maintained the requirement to provide notice to the child's CASA program, but has removed the child's CASA program from the list of participants that can object to the proposed placement.

	Commenter	Position	Comment	Committee Response
			Whenever a social worker ~~must~~ intends to place a dependent child outside the child's county of residence, the procedures in section 361.2(h) must be followed. **(b) Participants to be served with notice** Unless the requirements for emergency placement in section ~~361.2~~ 361.4 are met, before placing a child out of county, the agency must notify the following participants of the proposed removal: **(d) Service of notice** (1) The agency must serve notice either by first-class mail, sent to the last known address of the person to be noticed, or by personal service at least 14 days before the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given; Comment: Although the phrase "at least 14 days before …" repeats statutory language, it arguably bears repeating because the statutory deadline for ICWA notice (required by subd. (d)(2)) is different. (See WIC § 224.2(d) [10 days before proceeding]; see also subd. (e)(2) [repeating statutory deadline for objection].)	The committee has amended the rule to clarify that it applies to a dependent child. The committee has also amended the rule to make clarifying changes. The committee has amended the rule to reference section 361.4. The committee has amended the rule to include the phrase "at least 14 days before placement" and to repeat the standard for emergency placement.

	Commenter	Position	Comment	Committee Response
			(3) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed out-of-county placement. Comment: The phrase "before the hearing on the proposed out-of-county placement" presumes there will be a hearing on the proposed placement, but the court need not set a hearing unless there an objection to the proposed placement. What should the deadline be for filing the *Proof of Notice* if no hearing is set?	The committee has amended the rule to indicate the Proof of Notice must be filed before *any* hearing on the proposed out-of-county placement. The committee is not setting a deadline for filing form JV-326 to allow courts the most flexibility in hearing the matter.
			(e) Objection to proposed removal (1) An o~~O~~bjection to the proposed intercounty placement ~~can~~ may be ~~done~~ made by using *Objection to Out-of-County Placement* (form JV-556).	The committee has amended the rule to improve grammar.
			(2) A request for hearing on the proposed removal must be made no later than seven days ~~of~~ after receipt of the notice.	The committee has amended the rule to improve grammar.
			(f) Notice of hearing on proposed removal (3) Notice must be by personal service or first-class mail; and	The committee has amended the rule to require that mail notice be by first-class mail and to allow for electronic service.
			(h) Emergency placements	

	Commenter	Position	Comment	Committee Response
			If the requirements for emergency placement in section ~~361.2~~ 361.4 are met, the agency must provide notice as required in section 16010.6. **Form JV-555** **Page 1, Item 2:** "The agency ~~is placing~~ intends to place the child out of county. …" **Page 1, left footer:** Wrong WIC section cited at the bottom. Judicial Council of California, *www.courts.ca.gov* New January 1, 2019, Optional Form Welfare and Institutions Code, § ~~366.21(n)~~ 361.2(h) California Rules of Court, rule~~s 5.610,~~ 5.614 **Page 2, Item 3:** … 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~~ after the date you received this notice. Comment: The verification sentence ("I declare under penalty of perjury…") looks like it is part of item 3. It should align with the left margin (i.e., do not match indentation of text in item 3) and perhaps be printed further down on the page. **Form JV-556**	The committee has amended the rule to cite section 361.4 The committee has revised the form to indicate "intends to place" The committee has revised the form to cite the correct code sections and rules of court. The committee has revised the form to improve grammar. The committee has revised the form to move the verification sentence.

	Commenter	Position	Comment	Committee Response
			It is unclear why all those phone numbers are required if notice is supposed to be by personal service or mail. **Page 1, first paragraph:** Suggested edits. If you do not agree with the out-of-county placement of the child, you can request a court hearing by filling out this form. The following people can object to ~~removal~~ the placement: 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. After you complete and sign this form, b~~B~~ring ~~this form~~ it to the clerk of the court. **Page 1, Item 5:** … Phone number of tribe, if known: **Page 1, left footer:** Wrong WIC section cited at the bottom. Judicial Council of California, *www.courts.ca.gov* New January 1, 2019, Optional Form Welfare and Institutions Code, § ~~366.21(n)~~ 361.2(h) California Rules of Court, rule~~s 5.610,~~ 5.614 **Page 2, underneath Item 7:**	The committee has revised the form to remove the request for phone numbers. The committee has revised the form to improve grammar and clarity. The committee has revised the form to remove the reference to phone numbers, since phone notice is not allowed per statute. The committee has revised the form to cite the correct code sections and rules of court.

SPR 18-28

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)
Simple comment chart template—your first choice in comment charts

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

	Commenter	Position	Comment	Committee Response
			Comment: The verification sentence ("I declare under penalty of perjury…") looks like it is part of item 7. It should align with the left margin (i.e., do not match indentation of text in item 7).	The committee has revised the form to move the verification sentence.
10.	Superior Court of Ventura County By: Hon. Tari Cody and Keri Griffith	AM	Hearing on objection is automatic per statute. Rule and form need revisions to make this clear and provide a mechanism for scheduling the hearing.	See committee responses below.
			Revise the title of Form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing	The committee has revised the title of form JV-556 as follows: Objection to Out-of-County Placement and Notice of Hearing.
			Revise JV-556 to include a box for hearing date, time, location.	The committee has revised form JV-556 to include a box for hearing date, time, and location.
			Revise Rule. 5.614 (d)(3) to read as follows: (3) Proof of Notice (form JV-326) must be filed with the court before any hearing on the proposed out-of-county placement.	The committee has amended the rule to indicate the Proof of Notice must be filed before *any* hearing on the proposed out-of-county placement.
			Revise Rule 5.614 (e)(2) to read as follows: (2) The Objection to Out-of-County Placement and Notice of Hearing (form JV-556) must be filed no later than seven days of receipt of the notice.	The committee has amended the rule to specify the form name, or local form.
			Revise Rule 5.614(f) to read as follows: Upon filing the Objection to Out-of-County Placement and Notice of Hearing (JV-556), the clerk shall set a hearing and notice of the hearing must be as follows:	The committee has amended the rule to make this clarifying change, and to allow the objection to be made on local form.

Item number: 28

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Information for Parents

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 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.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018:

Title
Juvenile Law: Information for Parents

Rules, Forms, Standards, or Statutes Affected
Revise and renumber form JV-060

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 16, 2018

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

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising and renumbering one Judicial Council information form to provide accurate, up-to-date information to parents whose children are the subject of juvenile court wardship proceedings. The recommendation includes information about recent changes to the law that address consultation with counsel before custodial interrogation, parental responsibility for costs of services and support provided to the child, and sealing of juvenile justice court records.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise *Juvenile Court—Information for Parents* (form JV-060) to:

1. Change the title of the form to *Juvenile Justice Court: Information for Parents;*
2. Renumber the form as JV-060-INFO and format it as a plain-language information form;
3. Provide information about the limits established by Senate Bill 190 (Mitchell; Stats. 2017, ch. 678) to parental liability for fees and costs of services provided to their children;

4. Provide information about the attorney consultation requirement for children 15 years of age and younger established by Senate Bill 395 (Lara; Stats. 2017, ch. 681);
5. Provide current information about the law governing sealing of juvenile court records as amended by Assembly Bill 529 (Stone; Stats. 2017, ch. 685) and Senate Bill 312 (Skinner; Stats. 2017, ch. 679); and
6. Make clarifying and technical changes.

The revised form is attached at pages 5–13.

Relevant Previous Council Action

The Judicial Council most recently revised form JV-060, effective September 1, 2017, to reflect amendment of the statutory requirements for sealing juvenile court records.

Analysis/Rationale

The committee recommends revisions to form JV-060 to conform to statutory amendments and to promote access to the courts for parents and guardians of children who are the subjects of juvenile wardship petitions based on accusations of illegal conduct. Three significant changes to the legal treatment of children and families involved in the juvenile justice system took effect January 1, 2018.[1]

First, SB 190 eliminates almost all parental liability to pay fees or repay the cost of services provided to the parents' children in juvenile justice, or delinquency, proceedings. Parents and children remain liable for victim restitution, as well as for any fines or penalties assessed by the court.

Second, SB 395 requires children 15 years old or younger held in custody to consult with an attorney before any custodial interrogation and before waiving their constitutional rights. Children may not answer questions or waive rights unless and until the consultation has happened.

Third, the Legislature enacted two bills that modify the law governing sealing of juvenile case records.

- AB 529 amends Welfare and Institutions Code section 786 to require the court to seal records for any case that it dismisses on the motion of the prosecution, on its own motion, or because the petition is not sustained after an adjudication hearing. The bill also adds section 786.5, which requires the probation department to seal the records of any juvenile who

[1] Effective June 27, 2018, section 34 of Assembly Bill 1812 (Stats. 2018, ch. 36), the 2018 Public Safety Omnibus budget trailer bill, amended section 1731.5 of the Welfare and Institutions Code to allow specified youth who are committed or transferred to the Division of Juvenile Justice (DJJ) of the California Department of Corrections and Rehabilitation to spend their entire sentences in DJJ if those sentences would be completed on or before their 25th birthdays. The revisions reflect that change.

successfully completes a prepetition diversion program. Sealing the record results in the arrest being deemed not to have occurred. If the probation department determines that the diversion program was not successfully completed, section 786.5 requires the department to provide notice of that determination to the individual, who must then have an opportunity to petition the court for review.

- SB 312 clarifies that records for a Welfare and Institutions Code section 707(b) offense can be sealed under section 786 if the offense was reduced to a misdemeanor. The bill also amends section 781 to authorize courts to seal other 707(b) records—not including those for sex offenses registerable under Penal Code section 290.008—as long as those records are accessible under specified circumstances (that is, not destroyed) and to preclude courts from sealing the records of a petitioner who was committed to the Division of Juvenile Justice until after the petitioner has reached 21 years of age.

In addition to the revisions required by statute, the committee responded to requests from courts and other stakeholders to replace current form JV-060 with a simpler format that would be easier to read online or in print. The committee also took this opportunity to make the form more accessible to parents and guardians without legal training by presenting the information in plain language and a user-friendly format that is consistent with other Judicial Council information forms, for example, *Guide to Psychotropic Medication Forms* (form JV-217-INFO).

Policy implications

This recommendation revises the form to present information more clearly and simply, consistent with the Judicial Council's policy to promote equal access to the courts. The revisions also reflect recent statutory amendments that address sealing juvenile court records, parental responsibility for reimbursement of county costs of providing services and support to a child who is the subject of juvenile justice proceedings, and a child's mandatory consultation of a lawyer before a custodial interrogation.

Comments

This proposal circulated for comment as part of the winter 2018 invitation-to-comment cycle, from December 15, 2017, to February 9, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Six organizations, one individual, and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment; all agreed with the proposal as is or if modified as suggested.

The Superior Court of San Diego County noted that many terms used in the form needed definition. In response, the committee added a glossary of terms. Two commentators suggested clarifying the description of SB 395's requirement that the child consult with an attorney before a custodial interrogation; the committee revised the description.

The state Department of Social Services suggested two significant changes. First, the department requested the addition of a social worker and a foster parent to the list of persons to whom a child must be allowed to complete a telephone call within an hour of arrest and detention. The committee added a foster parent and a social worker to the form, but not exactly as suggested. Section 627(b), which specifies the persons who can satisfy the requirement of a completed call, does not include a social worker or foster parent. Nevertheless, in recognition of the important role of those persons in the lives of children living in court-ordered foster care, many counties have adopted policies allowing detained foster children to make a call to one or both of them. The committee has revised its recommendation to reflect these policies.

Second, the department requested a more complete statement about a parent's right to counsel separate from the child's. The committee expanded the form's discussion of that issue. Finally, numerous commentators suggested grammatical, stylistic, and technical changes to make the form clearer and more accessible. The committee incorporated almost all of these suggestions, many through format changes. A chart with the full text of the comments received and the committee's responses is attached at pages 14–29.

Alternatives considered

In addition to the recommended action, the committee considered addressing these legislative changes through education and technical assistance; however, the judicial branch is not in a position to provide education to parents of children in juvenile justice proceedings.

Fiscal and Operational Impacts

The committee does not anticipate that the revisions will require the courts or their justice partners to make significant operational changes. Courts and agencies that print and distribute form JV-060 will incur costs to replace any existing stock of outdated versions of the form with form JV-060-INFO, but revisions to provide accurate legal information are needed regardless of format. The Judicial Council will incur costs to translate form JV-060-INFO into Spanish. The committee does not anticipate that the revisions will generate significant cost savings, though the dissemination of accurate legal information always holds the potential to reduce the length of hearings and the number of continuances required.

Attachments and Links

1. Form JV-060-INFO, at pages 5–13
2. Chart of comments, at pages 14–29
3. Link A: Senate Bill 190 (Stats. 2017, ch. 678), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB190*
4. Link B: Senate Bill 395 (Stats. 2017, ch. 681), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB395*
5. Link C: Assembly Bill 529 (Stats. 2017, ch. 685), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB529*
6. Link D: Senate Bill 312 (Stats. 2017, ch. 679), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB312*

JV-060-INFO Juvenile Justice Court: Information for Parents

Juvenile justice court (sometimes called *delinquency* court) is a court that decides if a child broke the law. The juvenile justice court helps to protect, guide, and rehabilitate children. And it helps keep the community safe.

This information sheet answers common questions that many parents have. It has three sections:

1. What Happens When Your Child Is Arrested
2. Juvenile Court Hearings and Orders
3. How to Keep Your Child's Juvenile Court Record Private

This form describes the juvenile justice court process. Some children who break the law and become involved with law enforcement or probation never need to go to court.

1 What Happens When Your Child Is Arrested

This section is about:

- What to expect when your child is arrested,
- What your child's legal rights are,
- What the *notice to appear* and the *petition* are,
- What it means to transfer your child to adult court, and
- What a *probation officer* does.

My child was arrested. What happens next?

Your child might be brought home or allowed to go home with you.

You will be given or mailed a notice to appear that tells you the date, time, and place you and your child need to go to the probation department or juvenile court. Talk to a qualified juvenile defense lawyer about your child's case. Many juvenile defenders offer free consultations.

Warning! You and your child *must* go to the meeting listed on the notice to appear even if no one contacts you again. Sometimes the meeting will be at probation. Sometimes the notice will order you to go to the juvenile court.

Your child might NOT be sent home immediately after the arrest.

If that happens, the officer who arrested your child may:

- Let your child go later.
- Take your child to juvenile hall and keep them there. This is called *in-custody detention.* If this happens, the arresting officer *must* try to contact you immediately to tell you where your child is and that your child is in custody.

What are my child's legal rights after arrest?

Your child has the right to make at least **two phone calls** within **1 hour** of being arrested.

- One call must be a *completed* call to a parent, guardian, responsible relative, or employer.
- The other call must be a *completed* call to a lawyer.
- If your child is currently in court-ordered foster care, your child may be allowed to call a foster parent or social worker.

Will they tell my child about the right to remain silent?

Yes. Before any officer asks your child about what happened, the officer must first tell your child about his or her *Miranda* rights. (The probation officer must also tell *you* about your child's *Miranda* rights.)

They will say:

"You have the right to remain silent. Anything you say will be used against you in court. You have a right to have a lawyer with you during questioning. If you or your parents cannot afford a lawyer, one will be appointed for you."

NOTE: If your child is 15 years old or younger and in custody, your child *must* talk to a lawyer—in person, by phone, or by videoconference (like Skype or FaceTime)—before answering any questions or giving up any rights. Your child cannot decide to answer questions or give up rights without first talking to a lawyer.

Does my child need a lawyer?

Many parents hire a lawyer for their child as soon as the child is arrested. If a petition is filed, your child has a right to a court-appointed lawyer, who must be *effective* and *prepared*, and must have specific education and training in juvenile justice cases.

Your child's lawyer represents only your child, not you, even if you are paying for that lawyer.

Do I need a lawyer for myself?

The court can order you to do things for your child and can order you to pay *restitution* to the *victim.* Some parents hire lawyers for legal advice about these issues.

NOTE: If you think you need your own lawyer and cannot afford to hire one, you can ask the court to appoint a lawyer for you. The court will decide whether to appoint you a lawyer. If it does, you might need to pay back the cost of the lawyer later.

If my child is required to meet with probation, how can we get ready?

It's a good idea to get legal advice. A defense lawyer who specializes in juvenile justice cases can help you understand your child's rights and know what to expect. Try to find school records and other information that shows what you and your child are doing to get back on track.

At the meeting, the probation officer will talk with you and your child to figure out the best way to handle your child's case.

NOTE: At this meeting, any information you or your child share with the probation officer might be shared with the court or the prosecuting attorney (DA).

- If the alleged offense is not serious or it's the first time your child has been accused of breaking the law, the probation officer might just tell your child what they did was wrong (reprimand them) and let your child go.
- The probation officer might offer to let your child do a special *diversion program instead* of going to court. Each county has different rules and different programs. If you and your child agree to the program and your child does everything the program requires, the juvenile court does not need to get involved.
- If the offense is more serious, the probation officer might refer your child's case to the prosecuting attorney (DA). If the prosecutor decides to file charges, they will file a petition in juvenile court. That's what the rest of this form is about.

What happens if my child is taken to juvenile hall after getting arrested?

The probation officer can decide to:

- Keep your child in custody, or
- Let your child go home with you.

If the officer lets your child go, they may still:

- Ask the DA to file a petition, and
- Set limits on what your child is allowed to do while at home.

If the officer does *not* let your child go, a petition *must* be filed within 48 hours of the arrest. A detention hearing must be held the next day the court is in session. The courts are closed on Saturdays, Sundays, and holidays. You and your child *must* be given a copy of the petition. ***Exception:*** If your child is under 8, your child does not have a right to get a copy of the petition.

How long can they keep my child in juvenile hall?

The judge will decide this at the detention hearing. The judge may keep your child in juvenile hall until the next hearing or until the whole case is over.

Can I visit my child in juvenile hall?

Usually, but you should contact the juvenile hall first to find out when you can see your child.

What if the probation officer says a petition will be filed?

The petition states the things your child is accused of or charged with. It means your child's case will be sent to juvenile court. You have the right to receive a copy of the petition. If you have not received a copy of the petition, ask the probation officer or the court clerk for one.

The petition says your child did something against the law

and asks the juvenile court to decide that what it says is true, but it does not prove anything. **Read the Petition Carefully!** It is important to know what your child is accused of.

Are all petitions the same?

No. Each petition is tailored to the child and the alleged offense. There are two kinds of petitions:

A **601 Petition** is filed when a child has:

- Run away,
- Skipped school a lot,
- Violated a curfew, or
- Regularly disobeyed a parent or guardian.

These petitions are filed by the probation department at the juvenile court. If the court decides the charges are true, your child can become a "ward" of the court. That means the court will supervise your child, and your child must obey the court's orders.

A **602 Petition** is for a charge that would be a *misdemeanor* (like shoplifting or simple assault) or felony (like stealing a car, selling drugs, rape, or murder) if an *adult* had done it.

These petitions are filed by the prosecuting attorney (DA). If the court decides the charges are true, the judge can:

- Order your child put on probation,
- Make your child a "ward" of the court, and
- Order your child placed out of your home or committed (locked up).

NOTE: If your family is involved with the child welfare system, talk with your lawyer about what your child's arrest means for that case. Depending on everything that has happened, the court might decide that it's best for your child to stay in the child welfare system, to be supervised in the juvenile justice system, or to be supervised and served in both systems.

Can my child's case be moved to adult court?

Very rarely. The prosecuting attorney (DA) can ask the juvenile court to transfer your child's case to adult criminal court. If that happens, talk to your child's lawyer right away. Adult criminal cases are handled very differently and there may be very serious consequences for your child.

A case can only be transferred to adult court if your child is:

- 14 years old or older, and
- Charged with a very serious or violent offense, such as:
  - Murder and attempted murder;
  - Setting a building on fire when there is someone inside (arson);
  - Robbery with a dangerous or deadly weapon;
  - Some rape, kidnapping, and carjacking cases;
  - Some firearms and drug offenses; and
  - Some violent escapes from a juvenile detention facility.

What does the probation officer do?

Probation officers investigate children's situations and backgrounds and write reports for the court. They also supervise children to see if they are doing what the court has ordered them to do.

Why does the probation officer write a report?

The probation officer writes reports to give the court information about your child. The reports give the judge a description of your child's situation, including life at home and school, the current charge(s), and any previous arrests or petitions. It can also include:

- Statements from your child, your family, and other people who know your child well;
- A school report;
- A statement by the victim; and
- Recommendations about what the court should do if the judge finds that your child did what the petition says.

When does the judge see the reports?

The probation officer presents a report at the *detention hearing*, *disposition hearing*, and each *review hearing*. The judge uses the reports to help decide how to handle your child's case.

2 Your Child's Court Hearings and Orders

If a petition is filed in your child's case, you and your child will have to go to juvenile court. Each time you go to court is called a "hearing." You may have to go to several court hearings. This section is about:

- What happens at the different court hearings,
- What happens after the hearings,
- What if your child becomes a ward of the court, and
- What your duties and responsibilities as a parent are.

Get Ready for Court

How will I find out about court hearings?

If your child is in custody, both you and your child will get notice at least 5 days before the hearing. Someone will deliver it personally or by certified mail.

If your child is* not *in custody, both you and your child will get notice of each court hearing at least 10 days before the date of the hearing. Someone will deliver it personally, by first-class mail, or, if you agree, electronically.

Can I go to my child's court hearings?

Yes. In fact, the law says you *must* go. The judge decides what is best for your child. Depending on the charges, if you can show that your child will listen to you and follow your rules, and that you will hold your child accountable and be supportive at home, the judge may let your child go home with you.

How many times will we have to go to court?

You and your child will probably need go to court several times. There will be different kinds of hearings where the court makes different decisions. *See page 8 for a table of different hearing types.*

Do we have the right to an interpreter?

Your child has a right to an interpreter. You might have a right to one, too. Ask for one if you do not speak English well and don't understand everything being said in court.

Can I speak at the court hearings?

Yes. You may speak when:

- The judge asks you questions,
- You are called as a witness, or
- The judge gives you permission.

Who else speaks at the court hearings?

Your child's lawyer will speak for your child. The prosecuting attorney (DA) will speak for the government. The probation officer may speak for the Probation Department.

Can the victim go to the hearings?

Yes. A crime victim has a right to go to and speak at any court hearing. The victim and the victim's parents (if the victim is under 18) will get notice of the hearing. Do not talk to the victim unless your lawyer tells you to.

When is the first court hearing?

If your child is in custody, the first hearing, called the *detention hearing*, must take place on the court day immediately after the petition is filed. The probation officer or prosecuting attorney (DA) must tell you when and where the hearing will be. You will also get a copy of the petition. At this hearing, the court decides only whether your child can go home or needs to stay in custody until the next hearing.

If your child is* not *in custody, the first hearing, often called the *initial hearing*, must take place no more than 30 days after the petition is filed. In addition to the notice described earlier, you and your child will get a copy of the petition at least 10 days before the date of this hearing.

What is a jurisdiction hearing?

The jurisdiction hearing is when the judge decides if your child actually did what it says in the petition.

Here's what to expect:

- The judge will ask your child to *admit to* or *deny* the charges listed in the petition.
- Your child's lawyer will consider the evidence and the possible outcomes, and then advise your child what to do.

- If your child *admits to* the charges, they give up the right to a trial. The judge will decide that the petition is true.
- If your child *denies* the charges, there will be a trial (called a *contested hearing*). The court may hold the trial on another day to give your child's lawyer time to get ready.

What happens at the "trial"?

At the trial, the prosecuting attorney (DA) will show evidence to prove the charges. Then your child's lawyer will show evidence in your child's defense. The judge will consider all the evidence and decide if the charges are true "beyond a reasonable doubt."

If there is not enough proof to decide the charges are true, the judge will dismiss the case. If your child is in custody, she or he will be let go. If this happens, skip ahead to section 3 of this form.

If the judge decides the charges are true, there will be a *disposition hearing.* That's when the judge will say what your child will need to do and where your child will live. Sometimes this hearing is right after the jurisdiction hearing, but it can also be later on the same day or on another day.

If your child is in custody, the judge can order your child to stay in custody or be released until the disposition hearing.

> ***If you live in a different county***, the court can transfer the case to your county court for the disposition hearing. Ask your child's lawyer if that is a good idea for your child's case.

What happens at the disposition hearing?

The judge will decide what orders to make to protect and rehabilitate your child and to protect the community.

The judge might order your child to:

- Live at home and obey informal probation rules for up to six months.
- Live at home, be supervised by a probation officer, and obey rules set by the judge.
- Live at a relative's home, a foster family home, a private group home, or a residential treatment program; be supervised by a probation officer; and obey rules set by the judge.
- Spend time in a county camp, home, ranch, or hall (in custody) and on probation.
- Spend time in the Division of Juvenile Justice (DJJ) of the California Department of Corrections and Rehabilitation (in custody).

The judge may also order *you*, the parent, to get counseling or parent training, or do other activities.

What if the judge puts my child on probation?

If your child is put on probation, the probation officer will supervise and work with your child to make sure that your child follows:

- The law,
- The court's orders, and
- All the rules of probation.

The probation officer will also encourage your child to do well in school and participate in job training, counseling, and community programs.

How often will the probation officer see my child?

Each case is different. The probation officer may meet with your child twice a week or only once a month.

What if the judge makes my child a *ward* of the court?

The juvenile law uses special language. Children who have committed offenses become wards of the court, but are not convicted. If your child becomes a ward of the court, that means the court is in charge of some of your child's care and conduct. The court does this to protect your child and the community.

What if the judge orders my child placed in foster care?

If the judge orders suitable out-of-home or foster placement, the probation officer may place your child in:

- An adult relative's home,
- An approved foster family home,
- A licensed private group home, or
- A residential treatment program.

What if the court sends my child to a secure county facility?

Most wards of the court who need secure confinement are sent to county facilities, like a ranch, camp, or juvenile hall, where they can be close to their families and local rehabilitative services. Ask the probation department about your child's program and how you can visit and stay in touch.

What if the court sends my child to DJJ?

Only wards who have committed the most serious violent actions or need intensive treatment are sent to DJJ. If the court sends your child to DJJ, visit www.cdcr.ca.gov/Juvenile_Justice/ to get more information about where your child might go and how you can visit and stay in touch.

If my child's case was moved to adult court, can my child be sent to adult prison?

Yes, but there are limits:

- Between the ages of 14 and 18, your child *must* stay at a juvenile facility (DJJ) *even if* sentenced to adult prison.
- If your child's sentence will end before your child turns 25, your child can stay at a juvenile facility (DJJ) for the entire sentence.
- If your child's sentence will last past the age of 25, your child can stay at DJJ until age 18, then be moved to an adult prison on the child's 18th birthday.

Important! If your child's case gets moved to adult court, talk to your child's lawyer right away.

Do I have to pay for what my child did?

Yes. The court may order you to pay fines or penalties.

If the court decides that the victim is entitled to restitution, you and your child are equally responsible for paying the victim back. *Restitution* is money that pays the victim to make up for the damage or harm your child caused. Restitution can pay the victim back for:

- Stolen or damaged property,
- Medical expenses, and
- Lost wages.

If restitution is not completely paid when your child's case is closed, it will become a *civil judgment*, which can affect your credit score.

Do I have to pay fees for services my child receives from the court or county?

No. You do not have to pay fees or pay back the cost of services, support, or an attorney *given to your child* by the county or court as part of this case.

But if you can afford it, you might have to pay back the cost of services, including an attorney, *given to you or other family members* by the county or the court.

What are my responsibilities as a parent?

Your parental duties do not end when the court gets involved. Your child may need you now more than ever.

If the judge decides the charges in the petition are true, you may be ordered to do things to:

- Help make up for harm your child caused, and
- Keep your child out of trouble in the future.

The court may order you to:

- Take classes,
- Go to counseling, or
- Do other activities that will help you and your child.

What if my child is in foster care or in custody?

Wherever your child goes, stay in touch as much as you can, however you can. Visit your child as often as you can. Support your child's programs and activities. Encourage your child to obey the court's orders and not to leave the placement without permission.

Find out what is happening in your child's life so that you can get ready for your child to return home. Learn how to make a protective and supportive environment for your child's return to school or work. Develop plans to hold your child accountable for their actions.

Where can I find parenting resources?

Contact your child's probation officer. Ask for referrals to community organizations, such as parents' groups or counseling services, that can help you. Your school district and local hospital or mental health department may also have useful programs.

If you have any questions that have not been answered, you may want to contact a lawyer for help.

3 How to Keep Your Child's Juvenile Court Records Private

Will anyone be able to look at my child's juvenile records?

Maybe. Although most juvenile court records are confidential, the law sometimes allows government officials to look at them.

However, in many cases the court will "seal" your child's juvenile records. Once the records are sealed, the law treats the arrest and court case as if they never happened. That means your child can truthfully say that your child does not have a criminal or juvenile record.

Exception: If your child wants to join the military or get a federal security clearance, your child may need to disclose information about the juvenile record.

How can we seal my child's juvenile records?

It depends on your child's situation.

Sealing at dismissal. If the juvenile court dismisses your child's case without making your child a ward of the court, the court must seal your child's records.

If the court does make your child a ward and later dismisses the case because your child has satisfactorily completed probation, the court will also seal your child's records and send your child copies of the sealing order and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation.*

If your child completes a probation diversion program, the probation department will seal those records and give notice to your child.

Sealing on request. If your child does *not satisfactorily* complete probation, the court will *not* dismiss the case and your child's records will not be automatically sealed. Your child can either:

- Ask the court to review the probation department's decision and order the records sealed, or
- Ask the court later to seal the records. (See form JV-595-INFO, *How to Ask the Court to Seal Your Records*, for more information.)

If your child is made a ward for an offense listed in Welfare and Institutions Code section 707(b), other than sex offenses requiring the child to register as a sex offender, your child can ask the court to seal the records:

- At age 21, if your child was sent to DJJ; or
- At age 18, if your child was not sent to DJJ.

Even sealed records can be viewed by the prosecuting attorney in some cases.

Sealing not allowed. If the court found that that your child committed a sex offense listed in Welfare & Institutions Code section 707(b) when your child was 14 or older for which your child needs to register as a sex offender, then the court cannot seal your child's records.

Can my child's juvenile court record be used against him or her as an adult?

Under the three-strikes law, some serious or violent felonies committed by a child at age 16 or 17 can be counted as strikes and used against the child in the future.

Court Hearings in Juvenile Justice Court

You and your child may have go to court several times. Each time you go is called a "hearing." Depending on your case, there may be different kinds of hearings to make different decisions. Here are some of them. Each time you have to go to court, you and your child (if 8 or older) will get a notice. The notice will tell you the date, time, and place to go.

Kind of Hearing	**What happens at this hearing**
Detention	The judge will decide if your child can go home or must stay in custody until the next hearing.
Transfer to Criminal Court	The juvenile court judge will decide if the case of a child who is 14 or older should be transferred to adult criminal court. Children under 14 cannot have their cases transferred to adult court. This hearing only happens for very serious or violent charges and only if the prosecuting attorney (DA) asks for the transfer.
Jurisdiction, part 1 (pretrial or settlement conference)	The judge, lawyers, and probation officer try to resolve the case without having a trial. The judge decides if your child actually did what the petition says. The judge will ask your child to *admit to* or *deny* the charges listed in the petition. Your child's lawyer will consider the evidence and possible outcomes, and then advise your child what to do. If your child **admits to** the charges, your child will give up the right to a trial. The judge will decide that the petition is true. If your child **denies** the charges, there will be a trial, usually a week or two later.
Jurisdiction, part 2 (trial)	At the trial, the prosecuting attorney will show evidence to prove the charges. Then your child's lawyer will present your child's defense. The judge will consider all the evidence and decide if the charges are true "beyond a reasonable doubt." – ***If there is not enough proof to decide the charges are true,*** the judge will dismiss the case. If your child is in custody, she or he will be let go. – ***If the judge decides the charges are true,*** there will be a disposition hearing.
Disposition	This happens *only* if the judge decides that the petition is true. The judge then decides what orders to make for your child. This hearing is often right after the jurisdiction hearing but can also be postponed to another day.
Hearings on Motions	The court decides legal questions that affect the case.
Review Hearings	This hearing provides a way for the court to check how your child is doing on probation or in placement. If your child is placed in foster care, the court must hold a review hearing at least once every six months.

GLOSSARY OF TERMS

Civil Judgment: A court order requiring a person to pay money to another person.

Detention hearing: The first court hearing after an arrest if the child is detained in custody.

Felony: An action that would be a serious crime if committed by an adult.

In-custody detention: Keeping a person in a secure place and not letting them go free or go home.

Juvenile delinquency: See *juvenile justice*, below.

Juvenile justice: The legal system designed to guide, rehabilitate, and protect children who break the law, and to keep the community safe. Also known as "juvenile delinquency."

Miranda: The U.S. Supreme Court case that requires law enforcement to tell persons detained in custody their rights before asking them questions.

Misdemeanor: An action that would be a less serious crime if committed by an adult.

Notice to appear: A paper telling you and your child to meet with a probation officer or go to juvenile court at a specific time and place.

Notice of hearing: A paper telling you the date, time, and place of a court hearing, and what will happen there.

Petition: A paper filed with the court that says your child did something against the law.

601 petition: A petition filed by the probation officer that accuses your child of something that's against the law for a child to do, for example, skipping school or breaking curfew.

602 petition: A petition filed by the prosecuting attorney that accuses your child of doing something that would be a crime if an adult did it.

Probation officer: A law enforcement officer who advises the court about the orders the child needs to protect and rehabilitate the child, and supervises the child as ordered by the court.

Restitution: Money owed to the victim of an act to make up for the damage or harm done.

Terms* or *terms and conditions of probation: Court orders that tell a person on probation what they must and must not do.

Ward: A child whom the court has decided to supervise because the child did something against the law.

W18-05

Juvenile Delinquency: Information for Parents (revise form JV-060)

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

	Commentator	Position	Comment	Committee Response
1.	Child Youth and Permanency Branch California Department of Social Services by Turid Gregory-Furlong	AM	Page 5: "A child who is locked up or held by an officer detained has the right to make at least two phone calls within one hour after arrest. One of the phone calls must be a completed call to a parent, guardian, responsible relative, or employer. The other call must be a completed call to an attorney."	
			If the child is a foster child, the child has the right to call their social worker per WIC 16001.9(6). This should be included, as well as adding foster parent (not simply guardian) to the language.	The committee has recommended adding "social worker" and "foster parent" to the form, but not exactly as suggested. The information on the existing form reflects section 627(b) of the Welfare and Institutions Code,[1] which specifies the persons to whom a child must be allowed a completed call while in law enforcement custody. Section 16001.9(a), which enumerates the rights of a child placed in foster care, does not apply directly to a child in law enforcement custody. As a matter of state law, therefore, a child in custody probably does not have the right to contact a social worker or foster parent. However, because of the important role of those persons in the life of a child in foster care, many counties have adopted policies allowing foster children to make a call to one or both of them. The committee has revised its recommendation to reflect these policies.
			Page 6: "4. Do I need a lawyer for myself? No, not usually. But the court can order you to do things to help you be a better parent for your	The committee agrees that the statement on the form is incomplete and has added language to the form to indicate that (1) a parent is entitled to hire

[1] Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

	Commentator	Position	Comment	Committee Response
			child. If And if your child has a lawyer, the lawyer represents only your child, and not you." • This is a misleading statement for the parent, and does not inform the parent they may be entitled to counsel if order by the court. Per WIC 633, 634, Rules of Court 5.534, and the Report to the Chief Justice: Commission on the Future of California's Court System 2017 o WIC 633. Upon his appearance before the court at the detention hearing, such minor and his parent or guardian, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of such minor and his parent or guardian to be represented at every stage of the proceedings by counsel. o WIC 634. When it appears to the court that the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint counsel. In a case in which the minor is alleged to be a person described in Section 601 or 602 , the court shall appoint counsel for the minor if he appears at the hearing without counsel, whether he is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor; and, in the absence of such waiver, if the parent or	counsel separate from the child's counsel, (2) if the parent cannot afford to hire separate counsel, the parent may ask the court to appoint counsel, (3) the court has discretion to appoint separate counsel for a parent, and (4) the parent may be required to repay the cost of counsel appointed to represent that parent if it is determined the parent is able to pay.

	Commentator	Position	Comment	Committee Response
			guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court shall appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. In a county where there is no public defender the court may fix the compensation to be paid by the county for service of such appointed counsel. o Rule 5.534 (specifically) (d) Appointment of counsel (§§ 317, 353, 633, 634, 700) (1) In cases petitioned under section 300: (A) The court must appoint counsel for the child unless the court finds that the child would not benefit from the appointment and makes the findings required by rule 5.660(b); and (B) The court must appoint counsel for any parent or guardian unable to afford counsel if the child is placed in out-of-home care or the recommendation of the petitioner is for out-of-home care, unless the court finds the parent or guardian has knowingly and	

	Commentator	Position	Comment	Committee Response
			intelligently waived the right to counsel. (2) **In cases petitioned under section 601 or 602:** (A) The court must appoint counsel for any child who appears without counsel, unless the child knowingly and intelligently waives the right to counsel. If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court must appoint counsel for the child and order the parent or guardian to reimburse the county; **(B)The court may appoint counsel for a parent or guardian who desires but cannot afford counsel; and** (C)If the parent has retained counsel for the child and a conflict arises, the court must take steps to ensure that the child's interests are protected. o Report to the Chief Justice: Commission on the Future of California's Court System 2017 (pg 109): "California already provides reunification services to parents in many delinquency matters in which the child is being placed in foster care. Yet these parents are not formally before the court as parties, and typically they have no legal representation. Statutes and the rules of court provide that parents are entitled to representation in these proceedings, and the court is	

W18-05

Juvenile Delinquency: Information for Parents (revise form JV-060)

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

	Commentator	Position	Comment	Committee Response
			authorized to appoint counsel, but in practice the court rarely does so." Footnote citation WIC 633, 634, and Rules of Court 5.534	
2.	Joint Rules Subcommittee (JRS) Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	AM	The JRS notes that the proposed revisions will create a minor impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.).	The committee appreciates the JRS's comment. No specific response is required. The committee notes that since circulation for comment, form JV-060 has been renumbered and reformatted as a plain-language information form. The reformatting process has addressed many of the substantive suggestions and concerns raised by this and other commentators.
			Suggested Modifications: •P. 4: Delete the "_____ County" line at the top. Rationale: This is an information page for parents and doesn't need to come from a particular county. Also, having that blank forces staff to type or write in a county, which takes extra staff time.	The committee agrees and has incorporated the suggested change into its recommendation.
			•In the second paragraph on page 4, change the second clause to read "the court will make orders for you and your child with the goals that your child will become rehabilitated and the community will be protected." Rationale: It makes more sense in a wardship case.	The committee has made changes consistent with the suggestion by clarifying that the court order is designed to guide and protect the child and keep the community safe. Section 202(a) specifies that the primary purpose of the juvenile court law, including both juvenile justice and child welfare proceedings, is "to provide for the protection and safety of the public and each minor." The committee chose not to use "become rehabilitated" because it is not plain language and might confuse some parents reading the form.

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Juvenile Delinquency: Information for Parents (revise form JV-060)

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

	Commentator	Position	Comment	Committee Response
			•In the section, "My child came home after being arrested…", change the phrase in the second paragraph "need to go to a meeting" to "must go for a meeting." In the next paragraph, change "you and your still need to show up as directed" to "you and your child must appear as directed." Rationale: It should be very clear that these appearances are not optional.	The committee agrees that the form should clearly state that these meetings are not optional. The committee has changed "need to" to "must" in both places suggested. Because "appear" has a technical sense susceptible to misunderstanding, the committee has chosen to use "go to" instead.
			•On page 5, at the top, paragraphs a, b, and c should each be followed with the word "or" because they are all separate options for the police officer.	The committee has addressed this concern in the reformatting process.
			•On page 6 in paragraph 3, the first sentence is misleading. It should read "If your child does not already have an attorney, you may wish to contact an attorney for advice." Rationale: The public defender usually will not talk to a child or parent until they are appointed by the court.	The committee has addressed this concern in the reformatting process.
			•On the same page, paragraphs a. and b. should be followed by an "or" to make it clear these are separate options.	The committee has addressed this concern in the reformatting process.
			•In paragraph 4. On page 6, the last sentence should read "If your child has a lawyer, the lawyer represents only your child, not you." The word "And" in the front of the sentence should be deleted.	The committee has addressed this concern in the reformatting process.
			•On page 10, paragraph 14, paragraphs a. through d. should be followed by an "or."	The committee has addressed this concern in the reformatting process.

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

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	Commentator	Position	Comment	Committee Response
3.	Los Angeles County Department of Children and Family Services by Ruena Borja, MSW	AM	1. Page 4, item 1, last paragraph: Delete the word "directed" and add "written on the notice or citation."	The committee appreciates the department's comments. It has addressed this concern in the reformatting process.
			2. Page 5, item 2, 4th paragraph: I believe we should add, "If your child is not allowed to leave and any officer…"	The committee has addressed this concern in the reformatting process.
			3. Page 5, item 2, Note: The double negative may be confusing. I would suggest the last sentence read, "Your child cannot give up this right and decide to be questioned by an officer without first speaking to an attorney."	The committee has addressed this concern in the reformatting process.
			4. Page 7, items 6b and 7, and page 11, item 16: The document should be consistent to delete "district attorney" and replace with prosecuting attorney.	The committee has addressed this concern in the reformatting process.
			5. Page 8, item 10, last paragraph: Suggest striking "right after the case is finished."	The committee has addressed this concern in the reformatting process.
			6. Page 9, item 12e and f: The document should be consistent to reflect the prior change from "offense(s)" to "act(s)."	The committee has addressed this concern in the reformatting process.
			7. Page 13, item 24: I would suggest expanding this to include more detail. For example, "You will not be required to pay back the cost of services, support, or legal assistance/cost of an attorney provided to your child by the court or the county." And then also bolding and/or italicizing the words "your child" and "you or	The committee has addressed this concern in the reformatting process.

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	Commentator	Position	Comment	Committee Response
			other family members" to make the distinction clear.	
4.	Orange County Bar Association by Nikki P. Milliband, President	AM	1. The proposed changes to Judicial Council Form JV-060 (Juvenile Court Information for Parents) correctly summarize new developments in juvenile law regarding new limits on parental financial liability brought about by SB 190, requiring attorney consultation prior to waiving *Miranda*, pursuant to SB 395, and the sealing of juvenile records after AB 529 and SB 312. In addition, the proposed changes include the addition of a legally correct and helpful statement regarding the court's ability to transfer a case to the county of the child's residence for disposition. While the proposed statements appropriately address the stated purpose, we would urge the Judicial Council to consider adding additional language informing parents that statements given to the probation officer during their investigation of the case are not confidential and can be used in court proceedings against their child. We recommend adding the following language to section 1: "A probation officer will probably contact you and ask you and your child to come in for a meeting. <u>The information shared with the probation officer by either you or your child may be shared with the court or the prosecutor.</u>	The committee appreciates the bar association's comment. No specific response is required. The committee agrees and has incorporated the suggested change into its recommendation.
5.	Santa Clara County Department of Family and Children's Services	A	This draft proposal reflects laws that already went in to effect (1/1/18) and are rooted in	The committee agrees that it is important to note that the law treats a child involved in both the

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	Commentator	Position	Comment	Committee Response
	by Francesca LeRue, Director		Juvenile Justice Court process, not Dependency. With that said, Dependent children who are dually involved (also referred to as cross-over youth) will be impacted on the Juvenile Justice side, though these measures generally favor youth and family rights and thus are anticipated to be viewed positively by the families impacted. Although it would lengthen the information form, it could benefit from 1-2 paragraphs about dually-involved youth.	child welfare and juvenile justice systems differently from a child involved in only one of those systems and has added such an acknowledgment to its recommendation.
6.	Superior Court of Los Angeles County (no name provided)	AM	1. Page 5, item 2b: We suggest using a simpler term than "diversion." If this is not possible, change to "diversion programs." 2. Page 6, item 4: Should explicitly specify that the parent would be financially responsible for their own attorney. Insert language such as: "If you request an attorney for yourself, you may be financially responsible for that attorney's legal fees." 3. Page 7, item 6a: Instead of "disobeyed a parent," change to "disobeyed a parent or guardian."	The committee appreciates the court's comments and has addressed this concern in the reformatting process. The committee has addressed this concern in the reformatting process. The committee has addressed this concern in the reformatting process.
7.	Superior Court of Riverside County	A	1. Does the proposal appropriately address the stated purpose? ***Yes.*** 2. Should the revisions to form JV-060 include any additional information for parents of a child in a juvenile wardship proceeding? ***No.*** 3. Would the proposal provide cost savings?	The committee appreciates the court's comments. No specific response is required. No specific response is required. No specific response is required.

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

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	Commentator	Position	Comment	Committee Response
			No.	
			4. What would the implementation requirements be for courts? ***No additional implementation requirements for the court.***	No specific response is required.
			5. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***Yes.***	No specific response is required.
			6. How well would this proposal work in courts of different sizes? ***No difference.***	No specific response is required.
8.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose? ***Yes.***	The committee appreciates the court's comments. No specific response is required.
			• Should the revisions to form JV-060 include any additional information for parents of a child in a wardship proceeding? If so, please describe. ***No. The amount of information is sufficient to meet the purpose of the form.***	No specific response is required.
			• Would the proposal provide cost savings? If so, please quantify. ***Unknown.***	No specific response is required.
			• What would the courts need to do to implement the proposed changes? ***Replace old forms with revised forms. Revise docket codes, local rules, and local forms as needed to reflect recent legislation (SB 190, SB 395, AB 529, and SB 312).***	No specific response is required.

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

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	Commentator	Position	Comment	Committee Response
			• Would three months from approval of this proposal until its effective date provide sufficient time for implementation? ***Yes.***	No specific response is required.
			• How well would this proposal work in courts of different sizes? ***It probably will work well. If resources permit, versions in languages other than English and Spanish should be made available.***	No specific response is required.
			FORM JV-060 Overall: Certain terms (e.g., ward, petition, probation officer, Notice to Appear, citation, detention in custody, detention hearing, terms of probation) are italicized, but it is not clear why. Other uses of italics are clearly for emphasis or for the title of a case ("*Miranda*") or a form. Presumably, these are terms that might require further definition or explanation for the reader, but none is consistently provided. (Contrast, e.g., the Cal. Code of Judicial Ethics [terms marked with an asterisk are defined in "Terminology" section].)	The committee agrees that the italicized terms need definition. The committee has added a *Glossary of Terms* at the end of the recommended form.
			Note: "Probation officer" is italicized the second time it appears on the form, not the first.	This concern has been addressed in the reformatting process.
			Be consistent with prosecuting attorney or district attorney (examples: Item 3 on page 6; items 6 and 7 on page 7, items 16 and 19 on page 11)	This concern has been addressed in the reformatting process.

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

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	Commentator	Position	Comment	Committee Response
			Paragraph 1: The juvenile court protects, guides, and rehabilitates children who break the law, and helps keep the community safe. This brochure tells you what to expect if your child gets arrested, is taken to a probation officer, or needs to go to juvenile court.	This concern has been addressed in the reformatting process.
			Question 2: If any officer is going to ask your child about what happened, the officer must first tell your child that he or she ~~the child~~ has the right to remain silent, that anything your child says will be used against him or her ~~the child~~ in court, that your child has a right to be represented by a lawyer, and that the court will appoint a lawyer if you or your child cannot afford one. These are called *Miranda* rights. The probation officer must also tell *you* about your child's *Miranda* rights.	The committee has chosen to use the term "child" to support the judicial branch's effort to implement Senate Bill 179 (Stats. 2017, ch. 853) by using respectful, gender-neutral language.
			NOTE: If your child is 15 years old or younger and in custody, your child *must* talk to an attorney in person, by phone, or by video conference (like Skype) before answering any questions or giving up any rights. Your child cannot ~~decide not~~ refuse to talk to an attorney.	The committee agrees that the circulated construction was awkward and has modified its recommendation to clarify that the child may not answer questions without first talking to an attorney.
			Question 4: Our court recommends the following language: "No, not usually. The court can order you to do things to help you be a better parent for your child and can order you to pay restitution to the	The committee has addressed this concern in the reformatting process.

	Commentator	Position	Comment	Committee Response
			victim. Some parents seek legal advice on these issues. Your child's lawyer represents only your child, not you." *Question 5:* The response to question 5 seems to say that if someone can afford to hire a lawyer for their child, they must do so. Our court recommends instead: "Yes. Your child has a right to a lawyer who is both effective and prepared. You may hire a lawyer to represent your child, or the court will appoint a lawyer to represent your child. California Rules of Court, rule 5.664, requires any attorney the court appoints to represent your child to have education and training specifically about representing children in juvenile justice cases." *Question 10:* The probation officer writes a report to the juvenile court judge about your child. The report says what the probation department thinks would be best for your child if the judge finds that your child committed the act(s) described in the petition. The report may include your child's prior arrest record; a description of the current offense(s); statements from your child, his or her your family, and other people who know your child well; a school report; and a statement by the victim. The probation officer presents this report at the disposition hearing.	 The committee has addressed this concern in the reformatting process. The committee has addressed this concern in the reformatting process.

	Commentator	Position	Comment	Committee Response
			If your child is placed on probation, the probation officer will supervise and work with your child to make sure he or she ~~that your child~~ follows the law, the court's orders, and follows the *terms of probation*. The probation officer will also encourage your child to do well in school and participate in job training, counseling, and community programs. *Question 12.d:* **The Hearing on Transfer to Criminal Court Jurisdiction.** If your child is 14 years old or older, the ~~district~~ prosecuting attorney may ask that your child's case be tried in adult court for some serious and violent offenses. At this hearing, the judge will decide whether your child's case will be transferred to adult court or heard in juvenile court. If your child is younger than 14, he or she cannot be transferred to adult court. *Question 13:* NOTE: If your child is arrested in one county, but you and your child live in a different county, the court may transfer the case back to the court in the county where you live before the disposition hearing. Ask your child's lawyer whether it's a good idea to ask the court to do that. *Question 14:* Our court suggests the following revision to the response to question 14:	Please see the committee's response to the comment on question 2, above. The committee has addressed this concern in the reformatting process. The committee has addressed this concern in the reformatting process. The committee has addressed these concerns in the reformatting process.

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Juvenile Delinquency: Information for Parents (revise form JV-060)

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	Commentator	Position	Comment	Committee Response
			a. Your child stays at home on informal probation supervision for up to 6 months. b. Your child stays at home under the formal supervision of a probation officer which is set up by the judge. Instead of f, create a separate paragraph that says: The judge will order your child to comply with conditions of probation to help your child reform his/her behavior. As a parent, you may be ordered to take part in counseling, parent training, or other activities. *Question 24:* No. You are not required to pay fees or costs for services *given to your child* as part of this case. But if you can afford to, you may be required to pay back the cost of services *given to you or other family members* ~~receive from~~ by the county or the court. *Changes to clarify the distinction between services that may or may not requirement repayment.* *Question 25:* If your child's records are sealed, it is as if the offense that brought your child to court never happened. That means your child can truthfully say he or she ~~that your child~~ does not have a criminal or juvenile record (unless your child wants to join the military or get federal security clearance).	The committee has addressed this concern in the reformatting process. The committee agrees and has incorporated the suggested changes into its recommendation. Please see the committee's response to the comment on question 2, above.

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

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

	Commentator	Position	Comment	Committee Response
			. . . The court will not seal your child's records if your child is found to have committed a sex offense listed in Welfare and Institutions Code section 707(b) when your child was 14 or older, and the charge was not dismissed or reduced to a misdemeanor or a lesser offense not listed in section 707(b). For all other offenses listed in section 707(b), your child may request that the court seal the records at age 21 if your child is committed to the Division of Juvenile Justice or age 18 for all other dispositions, but those records may be viewed by the prosecuting attorney in the future under certain circumstances. *Question 27:* In the response to question, our court recommends to move "You may want to contact a lawyer for assistance." out of the first paragraph and to a new paragraph at the very end.	The committee has addressed this concern in the reformatting process. The committee agrees and has incorporated the suggested change into its recommendation.

Item number:29

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: Thursday, August, 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Court Interpreters Advisory Panel (repeal and replace Rule of Court 2.891; adopt accompanying California Credential Review Procedures) (Action Required – recommend Judicial Council Action)

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
Claudia Ortega, 415-865-7623 , Claudia.Ortega@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 approved Annual Agenda

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.)
CIAP approved the procedures and rule of court on July 11, 2018.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Court Interpreters: California Court Interpreter Credential Review Procedures

Rules, Forms, Standards, or Statutes Affected
Repeal and adopt Cal. Rules of Court, rule 2.891; approve the *California Court Interpreter Credential Review Procedures*

Recommended by
Court Interpreters Advisory Panel
Hon. Brian L. McCabe, Chair
Shawn Landry, Vice-Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 8, 2018

Contact
Sonia Sierra Wolf, 415-865-4288
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Executive Summary

To implement Recommendation 64 of the *Strategic Plan for Language Access in the California Courts*, the Court Interpreters Advisory Panel recommends that the Judicial Council (1) repeal rule 2.891 of the California Rules of Court, Periodic review of court interpreter skills and professional conduct; (2) adopt new rule 2.891; (3) approve the *California Court Interpreter Credential Review Procedures*, to take effect on January 1, 2019; and (4) delegate authority to the Administrative Director to approve future changes, when necessary, to the *California Court Interpreter Credential Review Procedures.*

Recommendation

To implement Recommendation 64 of the *Strategic Plan for Language Access in the California Courts* (LAP) and fulfill the legislative mandate that directs the Judicial Council, under Government Code section 68562(d), to adopt standards and requirements for interpreter discipline, the Court Interpreters Advisory Panel (CIAP) recommends that the Judicial Council, effective January 1, 2019:

1. Repeal rule 2.891 of the California Rules of Court;
2. Adopt new rule 2.891;
3. Approve the new *California Court Interpreter Credential Review Procedures*; and
4. Delegate authority to the Administrative Director to approve future changes, when necessary, to the *California Court Interpreter Credential Review Procedures.*

The text of the new rule 2.891 is on pages 14–15. For the new *California Court Interpreter Credential Review Procedures*, see Attachment A.

Relevant Previous Council Action

The mandate to adopt standards and requirements for interpreter discipline was part of legislation enacted in 1992. (Sen. Bill 1304 [Lockyer]; Stats. 1992, ch. 770.) Prior to 1992, the State Personnel Board (SPB) and the Judicial Council shared responsibility for court and administrative hearing interpreters. The SPB established proficiency standards, administered a proficiency examination, and maintained and published a list of qualified interpreters. Government Code section 68564—repealed in 1992, though some requirements of former Government Code section 68564 are retained in the current version of the statute—required the Judicial Council to adopt rules and regulations for standards of professional conduct, for periodic review of court interpreter skills, and for removal from the SPB's recommended list of qualified interpreters for failure to maintain the required skill level.[1]

Early versions of SB 1304 required both the SPB and the Judicial Council to include within their duties: recruiting, training, testing, certification, continuing education, discipline, and evaluation of interpreters. The SPB opposed these expanded duties and, as a result, only the council was made responsible for fulfilling these responsibilities.

Upon passage of SB 1304, the Judicial Council was directed to set standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. Government Code section 68562(d) states: "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."

Effective January 1, 1999, the Judicial Council adopted rule 984.4 (Professional conduct for interpreters),[2] which sets forth standards regarding accurate interpretation, conflicts of interest, confidentiality, legal advice, professional relationships, and continuing education.

On January 22, 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts* (LAP). Seventy-five recommendations were made to expand and provide improved language access to limited-English-proficient (LEP) court users. Specific to the

[1] History regarding SB 1304 and the SPB is from communications dated June 2002.

[2] *http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_890*.

credential review procedures and rule 2.891, CIAP's Professional Standards and Ethics Subcommittee was tasked with addressing Recommendation 64, *Complaints regarding court interpreters*:

> 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 Rules of Court, rule 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., LEP persons and justice partners).

Analysis/Rationale

Background

The credential review procedures and proposed rule 2.891 will assist the council and the courts to (1) implement the legislative mandate to adopt standards and requirements for interpreter discipline; and (2) establish a discipline process for, and impose disciplinary sanctions on, court interpreters as they relate to their certification and/or registration. The adoption of the *California Court Interpreter Credential Review Procedures* fulfills the council's legislative mandate and aligns the profession of court interpreting with the vast majority of professions that have disciplinary procedures in place.

Rule 2.890 (formerly rule 984.4), adopted effective January 1999, provides the legal authority and foundation for disciplinary procedures as legislatively mandated in Government Code section 68562(d).

Currently, court-imposed disciplinary actions or a decision to either terminate an independent interpreter's contract or dismiss an employee for violation of rule 2.890, or for acts of malfeasance, does not result in any sanctions with licensing consequences impacting a court interpreter's certification and registration status on the *Master List of Court Certified and Registered Interpreters* (Master List).[3] This allows a court interpreter to remain on the Master List, as the court interpreter remains credentialed and able to accept other interpreting assignments.

[3] The Master List is used to search for court-certified and registered interpreters who are in good standing with the Judicial Council. Court-certified and registered spoken-language interpreters included on the Master List have passed the required Judicial Council approved exams: *http://www.courts.ca.gov/35273.htm.*

In the case of an independent contract interpreter who negotiates contractual agreements with each individual court, when ethical, professional conduct, or performance issues arise, the court often stops using that interpreter locally, but generally takes no other action. As a result, other courts are often not aware of the issue and may negotiate new contracts with the interpreter in question, or maintain an existing contractual agreement with him or her. It appears that this approach is a frequent practice among local courts with respect to independent contract interpreters.

Consequently, there has been an ongoing need to establish a mechanism through the credentialing body, the Judicial Council, to conduct a review or impose discipline on a credentialed interpreter for ethical violations; criminal convictions, such as those involving acts of moral turpitude, or other acts potentially related to someone's duties as an interpreter; or failure to meet the knowledge, skills, and abilities (KSAs) of court interpreting (i.e., performance-based issues that put into question an interpreter's ability to perform his or her job competently).[4]

Currently, California certified court and registered interpreters can only have their credential revoked due to noncompliance with annual renewal requirements. If their credential is revoked, they must retake all qualifying examinations currently in place in order to be reinstated to the Master List.[5]

To comply with Recommendation 64 and to fulfill the legislative mandate to adopt standards for interpreter discipline, CIAP's Professional Standards and Ethics subcommittee developed a complaint-based credential review process and proposed repeal and adoption of rule 2.891. Staff from the Labor and Employment Relations Unit and the Legal Services office also attended the meetings on a consultative basis.

Research conducted by the subcommittee and by the National Center for State Courts, showed that all other state court systems and most professional organizations (such as the California Court Reporters Board, California State Bar, and Registry for Interpreters of the Deaf) that have disciplinary procedures in place share one common characteristic: disciplinary procedures result from the initiation of a complaint. The subcommittee found that 33 of 49 state court systems that have disciplinary procedures in place do not assess interpreter performance without a complaint first being filed. Accordingly, this led the subcommittee to develop a complaint-based process, consistent with best practices in other court systems and professional organizations.

The seven-member subcommittee included four certified court interpreters to ensure the voice of the interpreter community was well represented. The interpreters on the subcommittee provided invaluable input regarding the concerns and needs of the interpreter community. The resulting

[4] Historical documents show that there have been attempts in the past at establishing disciplinary standards, in 2002 and 2006.

[5] Information regarding interpreter annual renewal requirements are found at: *http://www.courts.ca.gov/23507.htm*.

credential review procedures and revised rule of court is the result of a collaborative effort, focused on the goal of developing a discipline process and rule of court that will meet the needs not only of the courts, but also of the LEP community and community stakeholders.

Current rule 2.891, Periodic review of court interpreter skills and professional conduct
As currently written, rule 2.891, adopted in 1979, requires the courts to conduct a biennial review of the interpreting skill level and performance of employees and independent contractors. To date, statewide practices to conduct periodic reviews of interpreter skill and performance have not been implemented because:

- With over 150 languages interpreted in the California courts and with more than 1,900 court interpreters on the Master List,[6] 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; and
- 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, collective bargaining agreements for employee interpreters, and contractual agreements for contract interpreters. Accordingly, the subcommittee determined that the rule needed to be repealed and replaced to account for realistic conditions that have impeded the courts' ability to comply with the rule as written since the rules adoption in 1979. California is unique in the challenges it must address to establish a comprehensive, clear, and fair interpreter disciplinary policy. California has the largest number of credentialed interpreters on its Master List of any state in the country, as well as a much higher volume of interpreted proceedings in and out of courts.

Proposed rule 2.891, Request for court interpreter credential review
The repeal of current rule of 2.891 recognizes the realistic operational and logistical constraints that pose a challenge to the courts from executing the rule as written. With the newly adopted rule 2.891, courts can address disciplinary issues that violate interpreter standards of conduct and technical ability, and acts of malfeasance for both employees and independent contractors.

The proposed rule 2.891 is intended to address the challenges the trial courts face in their efforts to comply with the rule's requirements by providing them with a credential review process that reflects best practices and procedures in other professions and state court systems. The proposed rule also recognizes the distinction between the obligation of the credentialing body to ensure

[6] There are currently 858 court employees on the Master List.

interpreters abide by professional conduct and those of the employer to ensure employee interpreters follow workplace policies. Specifically, the proposed rule:

- Reiterates the Judicial Council's authority, as the credentialing body, 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 investigating and addressing interpreter violation of ethical canons and 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 resources procedures, collective bargaining agreements, and contractual agreements with independent contract interpreters.

The need for 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, outside entities that utilize court interpreters, and the vast majority of interpreters who preserve and maintain the integrity of the profession. It is important to note that the proposed procedures apply only to actions that affect licensing issues, focusing on conduct that impacts the status of an interpreter's credential (licensing) and will address the allegations that may rise to the level of requiring an investigation and possible hearing.

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. Rather, the credential review process supplements local court actions, and:

- Promotes integrity and respect, and serves to further legitimize the profession;
- Aligns California certified court and registered interpreters with the majority of other professions and professional organizations, 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(d);
- Establishes a process for the Judicial Council, in its role as the credentialing/licensing body, to review and adjudicate allegations of professional misconduct or malfeasance by spoken-language court interpreters; and
- Establishes due process protections and procedures governing the credential review process, including a review and appeal process.

The procedures are an easily navigable guide of how a review is initiated, conducted, and resolved consistent with procedures of other credentialed professions. They will serve as fair and clear procedures for court users, justice partners, and other entities who utilize the services of Judicial Council–certified court and registered interpreters.

The *California Court Interpreter Credential Review Procedures* will be a public-facing document, available on the Court Interpreter Program website. The subcommittee will also develop internal operational guidelines specific to the courts' needs and concerns.

Delegation of authority to the Administrative Director

CIAP recommends that the Administrative Director be delegated authority to adopt future changes to the review procedures. The delegation of authority is consistent with previous delegations of authority. CIAP will revisit the review procedures after one year of adoption, and make the determination if any modifications, additions, or clarifications are necessary. The following table lists the current authority of the Administrative Director:

Date Approved by Council	Description of Delegation
4/28/2000	Future selection of testing entities (spoken languages only).
8/24/2000	Approval of future changes to the *Compliance Requirements for Certified Court and Registered Interpreters.*
10/27/2000	Designation of additional languages for inclusion in the court interpreter certification exam program in the future.
8/15/2008	Set retake policies for court interpreter certification and registration examinations, effective immediately.
8/15/2008	Determine the number of test administrations per year for court interpreter certification and registration examinations, effective immediately.
8/15/2008	Determine the annual renewal fee that court interpreters pay to renew their certification and registration. The Administrative Director shall set the fee based on an analysis of the market rate that other peer organizations charge for the renewal of professional certifications, effective immediately.
10/23/2009	Set court interpreter certification and registration testing fees based on the current market cost for the administration of these examinations.
12/15/2009	Authorization/selection of testing entities to test and certify court interpreters for deaf or hard-of-hearing individuals.
4/17/2012	Adoption of market-rate exam fees to be paid by interpreter candidates.

Policy implications

Public comments received did not raise challenges to the need to establish disciplinary procedures at the credentialing level, or with the Judicial Council's authority to discipline interpreters as it relates to their certification and registration (credentialing) status.

Comments

The credential review procedures and rule of court 2.891 were circulated for public comment from April 9 to June 8, 2018. CIAP received five comments. Commentators were exclusively

from the courts and consisted of the Superior Courts of Los Angeles, Orange, Riverside, and San Diego Counties; and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee

The Joint Rules Subcommittee and the Superior Court of Los Angeles County suggested that the word local, be removed from the rule provision found in section (c)(1); Line 3, which read: 'On a request made to the council by any person, **local** court, or other entity for the review of an interpreter's credential for alleged professional misconduct or malfeasance by an interpreter credentialed by the council, the council will respond in accordance with procedures stated in the *California Court Interpreter Credential Review Procedures'*. The committee agreed, and the word local was removed from the rule of court

The public comments submitted regarding the credential review procedures resulted in changes being made to the statute of limitations and clarification on submitting a request for review.

Following the comment period, and prior to taking a vote to recommend the procedures be adopted by the council, there was legitimate concern raised by some CIAP members as to the modifications made to the 90-day statute of limitations in the procedures. The concern raised was about the exception made for local courts, which choose to conduct their own investigations that may extend more than 90 days. It was noted that it is not in the best interests of the interpreter being investigated, as a local investigation could take an extended period of time, exceeding 90 days, and up to several months, before it is determined that a credential review is warranted. Other members noted that courts are not motivated to have a long investigation and are better served to expedite investigations. Courts depend on the services of the interpreter, and a long investigation would be detrimental to the courts that depend on interpreter services. The internal operational procedures will address this concern, and courts will be encouraged to seek guidance and consult with the council's Legal Services office if an internal investigation is initiated by a local court.

The following table illustrates the changes made to the credential review procedures following review of the public comments.

Page and Section	**Original Text**	**Revised Text**
Page 2, D. Statute of Limitations	Complaints submitted to the Judicial Council more than 90 days after the alleged misconduct will be rejected as untimely.	Requests for credential review submitted to the Judicial Council by a person or entity other than a court more than 90 days after the alleged misconduct occurs will be rejected as untimely. (1) Any requests for credential review received by a court must be promptly forwarded to the Judicial Council for review and analysis.

Page and Section	Original Text	Revised Text
		(2) Courts that choose to locally investigate an allegation of misconduct must submit a request for credential review within 30 days of the completion of the investigation; or, (3) If a court chooses not to investigate, but still requests a credential review, it must submit the request to the Judicial Council within 90 days of the date of the alleged misconduct; or (4) If the 90-day period has elapsed, the court must submit the request for review to the Judicial Council within 30 days of becoming aware of the alleged misconduct.
Page 2, E. Submitting a Request for Review	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 court or registered interpreter and enrolled on the Master List. (2) Must be signed under penalty of perjury (3) May be submitted in person to the Judicial Council, or sent by e-mail, or mailed to: (5) May be submitted anonymously, but no acknowledgment or notice of any action taken will be sent to the petitioner.	Any person or entity, including the court, 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. **Added to (2):** During the credential review process, the confidentiality of a complainant's identity will be safeguarded to the extent permitted by law. May be submitted in person to the Judicial Council, or to the local court where the allegation occurred, sent by e-mail, or mailed to: [Judicial Council address provided] Deleted (5) during public comment review by the committee's consensus. Due to the potential severity of discipline, and impact on the interpreter, the bar should be set higher to require the petitioner, who is making the allegation, to provide their name.

Page and Section	Original Text	Revised Text
Page 3, 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.	Within 30 days of receipt of the request for credential review, designated Judicial Council staff will assess the request for credential review and determine whether it is complete, meets jurisdictional requirements, and provides sufficient factual allegations that, if true, would constitute grounds for discipline. (1) The petitioner will be notified within 45 days of the receipt of the request for review informing them that the request has been received and is being reviewed; or, (2) The petitioner will be asked to provide additional information in order for staff to assess the request for review; (3) The council will notify the petitioner of the action to be taken regarding their request for review; (4) If the request for review meets the jurisdictional requirements, Judicial 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 (5) 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

Page and Section	Original Text	Revised Text
		deferral, the reasons for the deferral, and its anticipated duration, if known. (6) All requests for credential review and investigations are confidential, except when a final determination is made to impose any of the sanctions listed in section M, Discipline. (7) The final determination, including the grounds for the sanction(s) may be made accessible to the public consistent with the rules governing public disclosure.

Public comments included questions regarding implementation at the court level, training required, and challenges and conflicts that may surface if the need arises to request a credential review due to the courts personnel policies and procedures, collective bargaining agreements, and Memoranda of Understanding (MOU). As the credential review procedures are a high-level procedural document—and will be publicly available—the specifics of how each individual court operationalizes the procedures and the interface between Legal Services and the courts will be addressed in the internal, court-specific operational procedural guidelines being developed. Courts will be encouraged to consult with the council's Labor and Employment Relations Unit for guidance on those issues that directly relate to labor and employment questions that may arise. In addition, a credential review form is being developed that will have clear instructions for both the public and the courts on how to submit a credential review request.

Alternatives considered

There were no alternatives considered to developing the credential review procedures. There had been discussion on developing the procedures as a rule of court. The subcommittee 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. In support of this conclusion, it was 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.

Established disciplinary procedures—aligned with LAP's directive—are critical to ensuring the quality of interpreter services provided to the courts, justice partners, and other outside entities who trust and utilize the services of California certified court and registered interpreters. Without these procedures, respect for the profession will be compromised. Maintaining this respect is

essential as we face the ongoing need to provide fair and equal access to LEP court users, judicial partners, and the community who depend on qualified court interpreters to further the goals of language access.

Fiscal and Operational Impacts

Fiscal and operational impacts for the Judicial Council

The estimated costs the council will need for credential reviews 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 investigations is $184,000 to $359,000.[7]

For fiscal year 2018–19, financial resources were secured through the budgetary process to provide funds and additional staff resources required to implement the proposed procedures. The monies secured the following support:

1. ***Court Interpreter Credential Review*.** The establishment of an ongoing, judicial branch, court interpreter credential review process (administration, investigation, adjudication of interpreter cases processed through the Office of Administrative Hearings, and interpreter skill assessment). Included in the budget allocation, resources will be dedicated to contract through the council's procurement guidelines with qualified psychometricians and linguistic experts to develop a defensible language assessment tool, in the event an interpreter's language skills are found to warrant skill review as the result of an investigation.

2. ***Court Interpreter Specific Training.*** Adequate training and job skill enhancement will ensure that California's interpreters are qualified to perform the tasks associated with legal interpreting in the courts. Enhanced training will result in fewer errors in interpreted cases, fewer inaccuracies in court records, fewer complaints against interpreters, potentially fewer actions leading to dismissals, and less court user stress and confusion.

Fiscal and operational impacts for the courts

Commentators also noted that the credential review procedures will result in additional training for court staff and leadership to fully understand how to implement these procedures.

The implementation of any new policy or procedure demands that the courts are provided with resources and information so they may effectively execute any new directives. With the assistance of the National Center for State Courts, CIAP's Professional Standards and Ethics

[7] Legal review of allegations is $7,500–$10,000 per review. Prosecuting attorney fees (if outsourced by Legal Services with existing contracts) is $10,000–$25,000 for each case. Office of Admin. Hearings: filing fee is $100. ALJ is $810 (est. 4 hrs. per hearing). Cost per case: $18,410–$35,910. Estimated 10 cases per year: $184,100–$359,100. (There may be other contractual fees or costs not reflected here.)

Subcommittee and Judicial Council staff are developing comprehensive guidance materials that include operational guidance for court leadership, council staff, and court personnel. The internal operational guidance materials will address the very legitimate concerns noted by the commentators, and provide guidance for the courts. The materials will address those courts who may choose to undertake a local investigation in order to determine if requesting a credential review is in order. The guidance materials currently being developed will include:

- Internal operational guidance materials to facilitate the implementation of the credential review process for courts and Judicial Council staff.
- Related products including FAQs (one for the courts and one for the public), and an instructional PowerPoint presentation of credential review for court administrators and other relevant court personnel.
- Operational guidance materials using plain language.
- A credential review form in plain English with clear instructions. The form will be translated into the top 8–10 languages, and will be hosted on the Court Interpreter Program webpage.

CIAP and council staff are committed to working with the courts to provide support during the transition period and on an ongoing basis as further questions or situations, not previously anticipated, may arise after implementation.

Attachments and Links

1. Cal. Rules of Court, rule 2.891, at pages 14–15
2. Chart of public comments, at pages 16–30
3. Attachment A: *California Court Interpreter Credential Review Procedures*
4. Link A: Cal. Rules of Court, rule 2.890, *http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_890*
5. Link B: *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 is repealed and adopted, effective January 1, 2019, to read:

Title 2. Trial Court Rules

Division 6. Appointments by the Court or Agreement of the Parties

Chapter 3. Referees [Reserved]

Article 2. Court Interpreters

Rule 2.891. ~~Periodic review of~~ Request for court interpreter ~~skills and professional conduct~~ credential review

~~Each trial court must establish a procedure for biennial, or more frequent, review of the performance and skills of each court interpreter certified under Government Code section 68560 et seq. The court may designate a review panel, which must include at least one person qualified in the interpreter's language. The review procedure may include interviews, observations of courtroom performance, rating forms, and other evaluation techniques.~~

Certified and registered court interpreters are credentialed by the Judicial Council under Government Code section 68562. The council, as the credentialing body, has authority to review a credentialed interpreter's performance, skills, and adherence to the professional conduct requirements of rule 2.890, and to impose discipline on interpreters.

(a) Purpose

This rule clarifies the council's authority to adopt disciplinary procedures and to conduct a credential review, as set out in the *California Court Interpreter Credential Review Procedures.*

(b) Application

Under the *California Court Interpreter Credential Review Procedures,* all court interpreters certified or registered by the council may be subject to a credential review process after a request for a credential review alleging professional misconduct or malfeasance. Nothing in this rule prevents an individual California court from conducting its own review of, and disciplinary process for, interpreter employees under the court's collective bargaining agreements, personnel policies, rules, and procedures, or, for interpreter contractors, under the court's contracting and general administrative policies and procedures.

(c) Procedure

(1) On a request made to the council by any person, court, or other entity for the review of an interpreter's credential for alleged professional misconduct or malfeasance by an interpreter credentialed by the council, the council will respond in accordance with procedures stated in the *California Court Interpreter Credential Review Procedures.*

(2) On a request by the council in relation to allegations under investigation under the *California Court Interpreter Credential Review Procedures*, a California court is required to forward information to the council regarding a complaint or allegation of professional misconduct by a certified or registered court interpreter.

(d) Disciplinary action imposed

The appropriateness of disciplinary action and the degree of discipline to be imposed must depend on factors such as the seriousness of the violation, the intent of the interpreter, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

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Court Interpreters: California Court Interpreter Credential Review Procedures (repeal and adopt rule Cal. Rules of Court, rule 2.891 and adopt California Court Interpreter Credential Review Procedures)

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

	Commentator	Position	Comment	Committee Response
1.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	AM	**Suggested Modifications:** Rule 2.891(c)(1) Line 3, remove the word "local." - "On a request made to the council by any person, local court, or other entity…" **PROCEDURES** **D. Statute of Limitations** When a complaint is received by court management either verbally or in writing, the court may conduct an investigation to determine any violation of court's rules, policies or procedures, including those requirements set forth in rule 2.890 of the California Rules of Court. These investigations may take longer than 90 days. If after investigation the court determines a violation has occurred and elects to request a credential review as set forth in CRC 2.891, in addition to internal action, the statute of limitations for doing so may have expired. We suggest that the procedure provide for the following: if the complaint is received by the trial court, the JC should be notified and the statute of limitations for any subsequent Request for Review be tolled, pending completion of any underlying investigation. In addition, when a Request for Review is received by the JCC, the trial court should be notified to inform the court of possible violation of court's rules, policies or procedures.	The committee agrees and has taken the word 'local' from line 3, of the rule of court, so it now reads, "On a request made to the council by any person, court, or other entity…" Incorporated the change into the rule of court. As all interpreters, both employees and independent contractors are subject to these procedures, the committee prefers that the statute of limitations for filing a Request for Credential Review from the date of the alleged misconduct remain 90 days for those allegations of misconduct received by a person or entity, other than the court. **Section D. Statute of Limitations** has been modified provide for courts who choose to locally conduct their own investigations and that may exceed the 90 day statute of limitation. The committee recommends that courts consult the Legal Services Office for guidance in the event that evidence is discovered after the 90 days has elapsed, or as soon as the determination is made that a credential review is warranted, in order to co-ordinate any possible investigation. The new Credential Review Form being developed will include a section specific to the courts. The committee acknowledges that courts may require more than 90 days prior to requesting a credential review due to following progressive

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	Commentator	Position	Comment	Committee Response
				disciplinary procedures in accordance with the court's collective bargaining agreements, personnel policies, rules and procedures. The result may find that an employee's performance may require the court to take disciplinary action and may constitute a need for a credential review by the Judicial Council. To assist the courts, Judicial Branch operational procedures and guidelines are being developed and will be shared with the courts.
			E. Submitting a Request for Review E (5) - Change "received" to "sent." "May be submitted anonymously, but no acknowledgment or notice of any action taken will be ~~received~~ sent."	Upon further review the committee made the decision to not provide for the submission of a credential review anonymously, due to the potential severity of discipline, which has potential impacts an interpreter's credential. The committee believes the bar should be set higher and the request must include the complainants name and signature.
			Also, as stated above, when a Request for Review is received by the JCC, the trial court should be notified to inform the court of possible violation of court's rules, policies or procedures. Notice could be provided by either the JCC upon receipt of Request, or by including on the form itself that a copy be sent to the trial court where the violation occurred, if applicable. An internal and concurrent investigation may be warranted.	The Judicial Council's Legal Services Office will notify the court of possible violations and action to be taken, this provision is included in the procedures, **Section F. Assessment of a Request for Review.**

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	Commentator	Position	Comment	Committee Response
			F. Assessment of a Request for Review Suggest acknowledgment to petitioner of receipt of request and language that tells the petitioner that the request will be reviewed and investigated. Incorporate language that says investigations are confidential and if additional information is required, they (Petitioner) will be contacted. This eliminates the need to notify the petitioner of a rejected petition as defined in F (1) and informs the petitioner that they will be contacted if additional information is needed, acknowledging receipt of their request. Otherwise, JCC staff will receive emails and calls asking for acknowledgment of receipt and status of Request. Current language in F does not acknowledge receipt and only notifies the petitioner if the request is rejected.	Thank you, the committee agrees with these suggestions and the requested changes have been incorporated into the procedures.
2.	Superior Court of Los Angeles County	AM	**Suggested Modifications:** Rule 2.891(c)(1) Line 3, remove the word "local." - "On a request made to the council by any person, local court, or other entity…" **PROCEDURES** **D. Statute of Limitations** When a complaint is received by court management either verbally or in writing, the court may conduct an investigation to determine any violation of court's rules, policies or procedures, including those requirements set	The committee agrees and has taken the word 'local' from line 3 of the rule of court, so it now reads, "On a request made to the council by any person, court, or other entity…" Incorporated the change into the rule of court. As all interpreters, both employees and independent contractors are subject to these procedures, the committee prefers that the statute of limitations for filing a Request for Credential Review from the date of the alleged misconduct remain 90 days for those allegations of

	Commentator	Position	Comment	Committee Response
			forth in rule 2.890 of the California Rules of Court. These investigations may take longer than 90 days. If after investigation the court determines a violation has occurred and elects to request a credential review as set forth in CRC 2.891, in addition to internal action, the statute of limitations for doing so may have expired. We suggest that the procedure provide for the following: if the complaint is received by the trial court, the JC should be notified and the statute of limitations for any subsequent Request for Review be tolled pending completion of any underlying investigation. In addition, when a Request for Review is received by the JCC, the trial court should be notified to inform the court of possible violation of court's rules, policies or procedures.	misconduct received by a person or entity, other than the court. **Section D. Statute of Limitations** has been modified provide for courts who choose to locally conduct their own investigation and that may exceed the 90 day statute of limitation. The committee recommends that courts consult the Legal Services Office for guidance in the event that evidence is discovered after the 90 days has elapsed, or as soon as the determination is made that a credential review is warranted, in order to co-ordinate a possible investigation. The new Credential Review Form being developed will also include a section specific the courts. The committee acknowledges that courts may require more than 90 days prior to requesting a credential review due to following progressive disciplinary procedures in accordance with the court's collective bargaining agreements, personnel policies, rules and procedures. The result may find that an employee's performance may require the court to take disciplinary action and may constitute a need for a credential review by the Judicial Council. To assist the courts, Judicial Branch operational procedures and guidelines are being developed and will be shared with the courts.

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

	Commentator	Position	Comment	Committee Response
			E. Submitting a Request for Review E (5) - Change "received" to "sent." "May be submitted anonymously, but no acknowledgment or notice of any action taken will be ~~received~~ sent." Also, as stated above, when a Request for Review is received by the JCC, the trial court should be notified to inform the court of possible violation of court's rules, policies or procedures. Notice could be provided by either the JCC upon receipt of Request, or by including on the form itself that a copy be sent to the trial court where the violation occurred, if applicable. An internal and concurrent investigation may be warranted. **F. Assessment of a Request for Review** Suggest acknowledgment to petitioner of receipt of request and language that tells the petitioner that the request will be reviewed and investigated. Incorporate language that says investigations are confidential and if additional information is required, they (Petitioner) will be contacted. This eliminates the need to notify the petitioner of a rejected petition as defined in F (1) and informs the petitioner that they will be contacted if additional information is needed, acknowledging receipt of their request. Otherwise, JCC staff will receive emails and calls asking for acknowledgment of receipt and status of Request. Current language in F does	Upon further review the committee made the decision to not provide for the submission of a credential review anonymously, due to the potential severity of discipline, that has potential impacts an interpreters credential, the bar should be set higher and the request must include the person's name and signature of the one who is making the allegation. The Judicial Council's Legal Services Office will notify the court of possible violations and action to be taken, this provision is included in the procedures, **Section F. Assessment of a Request for Review** Thank you, the committee agrees with these suggestions and the requested changes have been incorporated into the procedures.

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	Commentator	Position	Comment	Committee Response
			not acknowledge receipt and only notifies the petitioner if the request is rejected. Request for Specific Comments: **Does the proposal appropriately address the stated purpose?** Yes **Are there other grounds for disciplinary action not addressed in the procedures**? No **Would the proposal provide cost savings? If so please quantify.** No savings to the court. **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.** Manager training on procedure would be approximately one hour. **Would three and a half months from Judicial Council approval of this proposal until its**	No response required No response required No response required No response required

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

	Commentator	Position	Comment	Committee Response
			effective date provide sufficient time for implementation? Yes	
3.	Superior Court of Orange County by Orange County Superior Court (OCSC) Civil Division	NI	The trial courts do not possess the technical or linguistic ability to evaluate the language skills of interpreters. Even if they did, the regional interpreter MOUs disallow this type of review of an interpreter's performance. For these reasons, rule 2.891 has been mute. While the new rule moves that authority to de-credential an interpreter up to the JCC, it still requires a "request for credential review" to initiate that process. This raises the question of under what circumstances would a trial court be qualified to make such a request in the first place, and if doing so would run afoul of the regional MOU. The real result of de-credentialing an employee is to render them unemployable under the law, which would likely result in labor actions and require local resource time and costs, potentially even if temporary or probationary discipline measures are imposed. The JCC should consider making General Counsel and/or financial resources available to courts for actions arising from this proposal.	A review by the Legal Services Office of the Judicial Council has determined that the Judicial Council, as the certifying body for California certified court and registered interpreters, retains the authority to discipline interpreters, both employees and independent contractors, as it relates to their certification and/or registration. To assist the courts with internal operational procedures, Judicial Branch operational procedures and guidelines are being developed and will be shared with the courts. An analogy can be made to instances that would require a court to file a complaint with the California Court Reporters Board or California State Bar, which have credentialing complaint procedures in place. Attorneys in the Legal Services Office of the Judicial Council will assist any courts that receive appeals of disciplinary employment actions arising from credentialing discipline resulting from these procedures. The Judicial Council will assist the courts with investigating and defending any disciplinary actions taken against employee interpreters under the Council's existing litigation defense programs. Costs incurred by the courts who choose to conduct an independent investigation, prior to requesting a credential review will not be covered.

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	Commentator	Position	Comment	Committee Response
				Courts should contact the Judicial Council Legal Service Office as soon as the determination is made that a credential review is warranted, in order to co-ordinate a possible investigation. The internal operational guidelines being developed will address these concerns.
			Does the proposal appropriately address the stated purpose? Yes	No response required.
			Are there other grounds for disciplinary action not addressed in the procedures? No	No response required.
			Would the proposal provide cost savings? If so please quantify. On one hand, de-credentialing an interpreter for cause may provide an indeterminate amount of procedural cost savings over time by eliminating bad actors who might be the basis for an issue on appeal or the reason for having to re-try cases. On the other hand, increased labor costs may result from employees invoking the formal labor process available to them.	No response required.
			What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising	The committee agrees that training and communication is key to the success of implementing these procedures. Judicial Branch operational procedures and guidelines are being developed and will be shared with the courts.

	Commentator	Position	Comment	Committee Response
			processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal training and communication on how to submit a formal request for review. **Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes **How well would this proposal work in courts of different sizes?** No comment	No response required. No response required.
4.	Superior Court of Riverside County	AM	**Does the proposal appropriately address the stated purpose**? Yes. The rule properly address the establishment of a process to review an allegation of professional misconduct or malfeasance against a California certified or registered court interpreter. Given that the Judicial Council recognizes a separate progressive discipline process, we recommend that the review process include additional detail concerning the coordination and follow-through at each stage of discipline.	

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Court Interpreters: California Court Interpreter Credential Review Procedures (repeal and adopt rule Cal. Rules of Court, rule 2.891 and adopt California Court Interpreter Credential Review Procedures)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			The proposed rule specifies that trial court authority remains unchanged as it pertains to each court's local human resource procedures, collective bargaining agreements or contractual agreements. However, there are processes during the credential review that may overlap or cause a conflict with the court's processes. The issues and steps to resolve such occurrences, i.e. where there is an overlap of procedures and investigatory procedure, should be better defined. For example: In the event that decertification of a certified or registered interpreter involves ongoing disciplinary issues of a current employee who has a history of disciplinary actions, the following details should be included: 1. Steps and timelines for gathering disciplinary documentation relevant to decertification. 2. Factors to consider when a complaint is submitted to the Judicial Council and the court that is directly related to an ongoing disciplinary issue. Ensure the coordination of events and activities to avoid overlap or conflict. **Timely Notice to the Judicial Council**: In the proposed Credential Review Procedure: The statute of Limitations, Item D, states that complaints submitted to the Judicial Council more than 90 days after the alleged misconduct will be rejected as untimely. However, consider the following:	Thank you for your considered comments. Judicial Council staff is committed to working closely with the courts in the areas where overlaps occur and where there may be conflicts. In order to assist the courts with the issues, questions, and challenges your court has addressed, Judicial Branch operational procedures and guidelines specific to the concerns raised are being developed and will be shared with the courts.

SPR18-30

Court Interpreters: California Court Interpreter Credential Review Procedures (repeal and adopt rule Cal. Rules of Court, rule 2.891 and adopt California Court Interpreter Credential Review Procedures)

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

	Commentator	Position	Comment	Committee Response
			Scenario 1: What if the court received a complaint on the 89th day and there was insufficient time to process it? The rule and procedure allows for submission by the party to the Judicial Council or by the court. If the party submits the complaint to the local court rather than the Judicial Council, additional time would be needed for local review before submission to the Judicial Council. The process should address submission by both the party and the court as the timeframes may vary. Scenario 2: What if there is a reasonable delay in discovering alleged misconduct? Is there a provision to extend the 90 day limitation period? For example: a year after the hearing, it is discovered that confidential information was released by the interpreter and compromised the case. Would the Judicial Council still review the complaint? **Administrative Leave of Absence:** We suggest the procedure include guidance concerning administrative leaves of absence. What is the notification process between the	**Section D. Statute of Limitations**, has addressed this issue. A complaint received by the court on the 89th day, would now fall within the statute of limitations. As all interpreters, both employees and independent contractors are subject to these procedures, the committee prefers a 90 day statute of limitation for filing a Request for Credential Review from the date of the alleged misconduct remain in the procedures, for those allegations of misconduct received by a person or entity, other than the court. **Section D. Statute of Limitations,** has been revised to provide for courts who choose to locally conduct their own investigations and provides for exception to the 90 day statute of limitation. The committee recommends that courts consult the Legal Services Office for guidance in the event that evidence is discovered after the 90 days has elapsed, or when the determination is made that a credential review is warranted. Judicial Council staff will be address this concern in the operational guidance materials being developed. It is recommended that the court notify

	Commentator	Position	Comment	Committee Response
			Judicial Council and the court when a leave of absence is administered and impacts a current employee-interpreter?	the council of any disciplinary action that results from a request for review.
			Section N of the procedure specifies that the Judicial Council must notify the petitioner, the interpreter, and all relevant courts within 30 days of any disciplinary action taken. In the event of decertification, suspension or removal, is it possible that notification of the proposed disciplinary action could occur sooner in order for courts to plan for the absence of the interpreter, if applicable?	De-certification or suspension requires a hearing, and action taken is recommended by the Administrative Law Judge, and confirmed or rejected by a three member panel of CIAP. The petitioner, interpreter and all relevant parties must be notified of any final action taken, the committee feels that notification (although it may be sooner than 30 days) within a 30 day window is reasonable.
			Subsequent actions during investigatory review: We suggest developing a protocol to be followed to address claims of misconduct that occur after a different allegation has already been referred to the Judicial Council for review. This is necessary to avoid more than one investigation regarding the same or similar allegations.	The committee agrees and will this will be addressed in the internal guidance that will be provided to the courts.
			Probationary Employees: Address the following: During the investigatory review employees could be placed on probation when allegations are founded, although the allegations do not warrant decertification. We understand that the Judicial Council could impose probation for a period of up to two years. There needs to be communication between the court and the	Probation imposed on an interpreter in a credentialing disciplinary action will in no way affect an interpreter employee's probationary or permanent employment status with a court under a regional Memorandum of Understanding. The credential review process is separate from a court's employment policies/process.

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	Commentator	Position	Comment	Committee Response
			Judicial Council concerning the impact of probation to ensure that the probation period imposed by the Judicial Council does not exceed the court's regular probationary period for its employees, which is generally one year. **Are there other grounds for disciplinary action not addressed in the procedures**? No	No response required.
			Would the proposal provide cost savings? Potentially, but only to the extent the local court receives a complaint against an interpreter employed by the court that rises to the level of a Credential Review Process, as the cost of any investigation would be borne by the Judicial Council, not the local court.	No response required.
			What would the implementation requirements be for courts? Initial startup costs: Training and ongoing discussion and review processes between the leadership team and the Department of Human Resources, information team meetings, meet and confer with the union and the development of internal procedures and guidelines on how to address performance issues and criteria for referral to the Judicial Council.	No response required.
			Issues that will require vetting, discussion and further development include but are not be limited to:	No response required.

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	Commentator	Position	Comment	Committee Response
			Identify criteria that exemplifies gross incompetence. Develop communication protocol for referring interpreters for Credential Review. Outline relevant internal procedures. Develop a plan of action for monitoring employees who are placed on probation by the Judicial Council. Determine how to provide input to the Judicial Council concerning factors in mitigation and aggravation regarding an interpreter subject to the credential review process. Meet and confer with the labor union regarding the credential review process. Modify the existing contract for independent contractors to incorporate new rules and provisions related to the credential review process. **Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Although three and a half months would be sufficient for the court to prepare its processes, the time required to implement this proposal is contingent upon the court's ability to meet and confer with the labor union regarding the grievance and progressive discipline process. **How well would this proposal work in courts of different sizes?** Probably equally well.	No response required No response required

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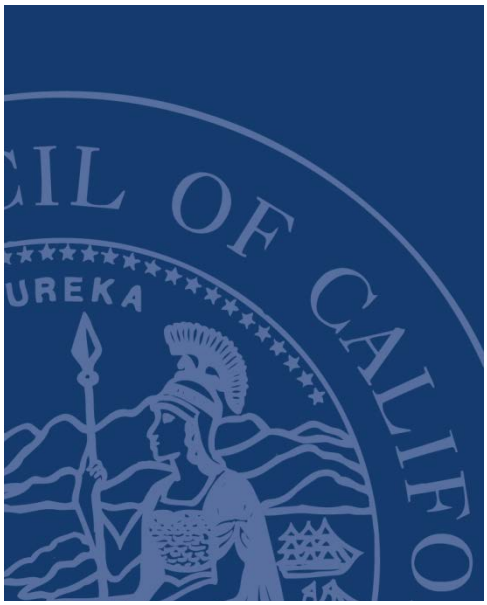
	Commentator	Position	Comment	Committee Response
5.	Superior Court of San Diego County by, Mike Roddy, CEO, Superior Court of San Diego County	A	No comment	



California Court Interpreter Credential Review Procedures

EFFECTIVE JANUARY 1, 2019

JUDICIAL COUNCIL OF CALIFORNIA

COURT INTERPRETERS ADVISORY PANEL

Table of Contents

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.[1] 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 Court and Registered Interpreters (Master List) is subject to these procedures.[2] Jurisdiction over an interpreter to enforce and act under these procedures exists regardless of whether the interpreter resides in California.

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[1] *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*.

[2] American Sign Language interpreters are credentialed by the Registry of Interpreters for the Deaf (RID).

C. Grounds for Disciplinary Action

As the entity responsible for issuing credentials to court interpreters in California, the Judicial Council may discipline any California 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

Requests for review submitted to the Judicial Council by a person or entity **other than a court** more than 90 days after the alleged misconduct occurs will be rejected as untimely.

1. Any requests for review received by a court must be promptly forwarded to the Judicial Council for review and analysis.
2. Courts that choose to locally investigate an allegation of misconduct must submit a request for review within 30 days of the completion of the investigation; or
3. If a court chooses not to investigate but still requests a review, it must submit the request to the Judicial Council within 90 days of the date of the alleged misconduct; or
4. If the 90-day period has elapsed, the court must submit the request for review to the Judicial Council within 30 days of becoming aware of the alleged misconduct.

Information about filing a request for review of an RID-certified interpreter is found at *www.rid.org/ethics/file-a-complaint/*.

E. Submitting a Request for Review

Any person or entity, including the court, 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 or Court Interpreter Credential Review form available on the "Court Interpreters Program" webpage of the California Courts website at *http://www.courts.ca.gov/programs-interpreters.htm.*
2. Must be signed under penalty of perjury. During the credential review process, the confidentiality of a complainant's identity will be safeguarded to the extent permitted by law.
3. May be submitted in person to the Judicial Council (or to the local court where the allegation occurred), sent by e-mail, or mailed to:

   Court Interpreters Program
   Judicial Council of California
   455 Golden Gate Avenue
   San Francisco, CA 94102-3688
   credreview@jud.ca.gov

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.

F. Assessment of a Request for Review

Within 30 days of receipt of the request for credential review, designated Judicial Council staff will assess the request for credential review and determine whether it is complete, meets jurisdictional requirements, and provides sufficient factual allegations that, if true, would constitute grounds for discipline.

1. The petitioner will be notified within 45 days of the receipt of the request for review informing them that the request has been received and is being reviewed; or
2. The petitioner will be asked to provide additional information in order for staff to assess the request for review;
3. The council will notify the petitioner of the action to be taken regarding their request for review; and,
4. If the request for review meets the jurisdictional requirements, Judicial 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

5. 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.
6. All requests for credential review and investigations are confidential, except when a final determination is made to impose any of the sanctions listed in section M, Discipline.
7. The final determination, including the grounds for the sanction(s) may be made accessible to the public consistent with the rules governing public disclosure.

G. Investigation of a Request for Review and Issuance of Charging Document

The Judicial Council's Legal Services office or its designees will conduct investigations of requests for review that proceed under section F, subdivision (4).

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.
   (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.
   (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 determine 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.
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.);[3] and
   (b) 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
   (c) Identify the specific disciplinary action to be taken.
5. Any decision made by the administrative law judge under subdivision (4) is subject to review by a three-member panel of the Court Interpreters Advisory Panel.[4] The three-member panel may approve, reject, or modify the decision of the administrative law judge.

M. Discipline[5]

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:

[3] Gov. Code, § 11340 et seq., at *https://oal.ca.gov/publications/administrative_procedure_act/*.

[4] 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.

[5] Separate from the *California Court Interpreter Credential Review Procedures*, California certified court and registered interpreters can be suspended or have their certification revoked for failure to comply with

(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.

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

annual compliance requirements as outlined in the Compliance Requirements for Certified Court and Registered Interpreters, at *http://www.courts.ca.gov/23507.htm*.

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.

Item number: 30

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship:Major Neurocognitive Disorders

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 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.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

Title
Probate Conservatorship: Major Neurocognitive Disorders

Rules, Forms, Standards, or Statutes Affected
Revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC 385

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 6, 2018

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends revising eight forms to implement recent legislation that replaced the term "dementia" with "major neurocognitive disorder" to conform to usage in the fifth and current edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5).* The committee also recommends stylistic and technical changes to several of the forms to bring them up to date.

Recommendation

The Probate and Mental Health Advisory Committee recommends 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, to add references to "major neurocognitive disorder" to all existing references to "dementia" and as follows:

1. Revise form GC-310, *Petition for Appointment of Probate Conservator*, to refer in item 5f more precisely to the language of Probate Code section 1420.

2. Revise form GC-313, *Attachment Request Special Orders Regarding Dementia,* 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 simplify the caption.

4. Revise form GC-334, *Ex Parte Order Re Completion of Capacity Declaration—HIPAA,* to simplify and clarify the caption, item 2, item 9, and the clerk's certification.

5. Revise form GC-335, *Capacity Declaration—Conservatorship,* to clarify the instructions and make technical changes.

6. Revise form GC-335A, *Dementia Attachment to Capacity Declaration—Conservatorship,* to replace "dementia" with "major neurocognitive disorder" in the caption, delete "dementia" from the heading of item 9b so that it reads "administration of medications" and delete "psychotropic" from the phrase "psychotropic medications" throughout item 9b to conform to the language in Probate Code section 2356.5(c), simplify the description of the standard for lack of capacity to give informed consent in items 9a(4) and 9b(4), and make technical changes.

7. Revise form GC-380, *Petition for Exclusive Authority to Give Consent for Medical Treatment,* to clarify that the form is mandatory and make technical changes.

8. Revise form GC-385, *Order Authorizing Conservator to Give Consent for Medical Treatment,* to clarify the instructions, clarify that the form is mandatory, and make technical changes.

The revised forms are attached at pages 6–24.

Relevant Previous Council Action

The Judicial Council initially approved forms GC-380 and GC-385 for optional use. These forms were last revised, effective January 1, 1998. Then, effective January 1, 2000, the council adopted for mandatory use all the Judicial Council forms that had previously been approved for optional use in decedents' estates, guardianship, and conservatorship proceedings and designated each form as mandatory by using an asterisk next to each form number on the official list of forms. As forms were revised after this date, the notations on the previously optional forms were updated to reflect their adoption for mandatory use. Although forms GC-380 and GC-385 are designated as mandatory by an asterisk on the forms list, the current forms themselves still indicate, incorrectly, that they are approved for optional use because they have not been revised since 1998. As noted below, this recommendation revises these two forms to indicate that they are adopted for mandatory use.

Form GC-310 has been revised several times over its history, most recently effective January 1, 2016. The council has not revised the other forms in this recommendation in more than a decade.

Analysis/Rationale

Until 2013, earlier editions of 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."[1] 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 in the *DSM-5* in 2013.[2]

The *DSM-5* replaced the term "dementia" with "major neurocognitive disorder (NCD)" and revised the disorder's diagnostic criteria. The drafters intended not to eliminate the use of dementia entirely, but to recognize that the term comprised several separate diagnoses and subsume them all under the broad category of major NCDs.[3] The work group proposed including the term dementia in parentheses to allow its continued use in contexts where it is the standard term.[4]

In response to the new terminology in the *DSM-5*, the Legislature and Governor enacted Senate Bill 413 (Stats. 2017, ch. 122), which amended section 2356.5 of the Probate Code, effective January 1, 2018, to replace the term "dementia" with "major neurocognitive disorder." The Probate and Mental Health Advisory Committee proposes revising eight Judicial Council forms, effective January 1, 2019, to implement SB 413 (Stats. 2017, ch. 122) by adding the term "major neurocognitive disorder" to the eight forms listed above wherever they use the term "dementia."

In a general 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, such 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, needs or would benefit from the placement or treatment, and, with respect to

[1] Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revision (DSM-IV-TR)* (2000).

[2] Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)* (2013).

[3] 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.

[4] *Ibid.*

placement, that a locked facility is the least restrictive placement appropriate to the needs of the conservatee. (*Ibid.*)

Several of the Judicial Council forms listed above directly implement the provisions of section 2356.5. Other forms refer to these forms or to so-called dementia powers. The recommended revisions insert "major neurocognitive disorder" in all forms where the term "dementia" occurs. In most instances, the revisions retain a reference to dementia to promote continuity between the old and the new forms.

In addition, the revisions delete the term "psychotropic" from the phrase "psychotropic medications appropriate for the care and treatment of dementia" wherever that phrase occurs. In some forms, the term has already been removed. Removing it from all the forms promotes consistency, both with other forms and with the language of Probate Code section 2356.5(c), which refers simply to "medications." Finally, the committee recommends technical changes to the forms to update references and promote clarity and utility.

Policy implications

In addition to implementing the council policies of updating rules and forms to conform to current law and practice and promoting equal access to justice for persons with disabilities, this recommendation promotes more effective and efficient collaboration among the courts, litigants, and treatment providers by incorporating into law the diagnostic terms and criteria currently in use by clinical practitioners.

Comments

This recommendation circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April to June 8, 2018, to the standard mailing list for rules and forms proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, and other court staff and probate professionals. Two courts, one individual, and three organizations provided comment. Four commentators agreed with the proposal. Two commentators agreed and offered suggestions for further revisions. The committee incorporated most of the suggestions into its recommendation and made additional technical and clarifying changes consistent with those suggestions. A chart with the full text of the comments received and the committee's responses is attached at pages 25–30.

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 seems calculated to lead to confusion. In addition, commentators have noted professional uncertainty about the precise scope of the term "major neurocognitive disorder." Although agreement exists that the term includes "dementia," the committee has not been able to identify a clear consensus regarding which other disorders might be covered or how diagnosticians may

distinguish between major NCDs and milder forms of impairment.[5] In light of these considerations and consistent with the recommendation of the APA work group, the committee opted to insert "major neurocognitive disorder" on the forms whenever "dementia" is used and to retain a parenthetical reference to "dementia" to promote continuity.

Fiscal and Operational Impacts

Implementation will require courts that provide paper versions of these forms to incur production and copying costs. Most courts will also need to make one-time changes to document names in their case management systems. Some courts may need to update their websites, but this impact should be mitigated by the availability of the forms to all courts and litigants on the California Courts public website. Any training costs are expected to be minimal.

Attachments and Links

1. Forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC 385, at pages 6–24
2. Chart of comments, at pages 25–30
3. Link A: Senate Bill 413 (Stats. 2017, ch. 122), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB413*

[5] See Joseph R. Simpson, "*DSM-5* and Neurocognitive Disorders" (2014) 42 *J. Am. Acad. Psychiatry & Law* 159, at p. 160 (dementias constitute "nearly all" of the major NCDs); *ibid.* (the distinction between major and mild NCDs is inherently arbitrary, and the disorders exist along a continuum).

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

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

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

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

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

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

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

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

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

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

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

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

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

Do NOT use this form for a temporary conservatorship.

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

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

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

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

   k. ☐ orders authorizing placement or treatment for a major neurocognitive disorder (such as dementia) as specified in the *Attachment Requesting Special Orders Regarding a Major Neurocognitive Disorder* (form GC-313) under Probate Code section 2356.5 be granted. A *Capacity Declaration—Conservatorship* (form GC-335) and *Major Neurocognitive Disorder 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 license with at least two years experience diagnosing major neurocognitive disorders (including 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 a major neurocognitive disorder (such as 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):*
   (Current 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):* (PROPOSED) CONSERVATEE	CASE NUMBER:

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

(1) ☐ a nominee. *(Affix nomination as Attachment 3c(1).)*
(2) ☐ the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
(3) ☐ the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
(4) ☐ a relative of the (proposed) conservatee as *(specify relationship):*
(5) ☐ a bank. ☐ 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 *(name):* (PROPOSED) CONSERVATEE	CASE NUMBER:

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

☐ has not ☐ has been filed in another jurisdiction, including a court of a federally-recognized 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 *(name):* (PROPOSED) CONSERVATEE	CASE NUMBER:

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

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

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

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

5. d. ☐ (Proposed) conservatee voluntarily requests the appointment of a ☐ successor conservator. *(Specify facts showing good cause in Attachment 5(d).)*

   e. ☐ *Confidential Supplemental Information* (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*

   f. (**Proposed) conservatee** ☐ 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 *(name):* (PROPOSED) CONSERVATEE	CASE NUMBER:

10. ☐ **Temporary conservatorship**

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

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

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

a. ☐ listed below.

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

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

☐ Continued on Attachment 11.

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

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

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

14. Number of pages attached:

Date:

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

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

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

Date:

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

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

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

ATTACHMENT REQUESTING SPECIAL ORDERS REGARDING A MAJOR NEUROCOGNITIVE DISORDER

☐ **Petition for Appointment of Probate Conservator (form GC-310)**
☐ **Petition for Exclusive Authority to Give Consent for Medical Treatment (form GC-380)**

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 that has a care plan that meets the requirements of California Code of Regulations, title 22, section 87705.
   b. ☐ to authorize the administration of medications appropriate for the care and treatment of major neurocognitive disorders (including dementia).
2. The conservatee or proposed conservatee has a major neurocognitive disorder (such as 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 license with at least two years' experience in diagnosing and treating major neurocognitive disorders (including 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 administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia). The conservatee lacks capacity to give informed consent to the administration of those medications.

Form Adopted for Mandatory Use
Judicial Council of California
GC-313 [Rev. January 1, 2019]

Probate Code, § 2356.5
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* PROPOSED CONSERVATEE		CASE NUMBER:
		CONSERVATORSHIP PETITION HEARING DATE:
EX PARTE APPLICATION FOR ORDER AUTHORIZING COMPLETION OF CAPACITY DECLARATION—HIPAA*		DEPT.: TIME:

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

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. ☐ Authority to make placement or medication decisions related to a major neurocognitive disorder (such as dementia).
   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 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).

Form Adopted for Mandatory Use
Judicial Council of California
GC-333 [Rev. January 1, 2019]

EX PARTE APPLICATION FOR ORDER AUTHORIZING COMPLETION OF CAPACITY DECLARATION—HIPAA
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1220, 1825, 1890, 1893, 2356.5;
42 U.S.C. §§ 1177, 1178;
45 C.F.R. §§ 160, 164
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* PROPOSED CONSERVATEE		CASE NUMBER:
		CONSERVATORSHIP PETITION HEARING DATE:
EX PARTE ORDER RE COMPLETION OF CAPACITY DECLARATION—HIPAA*		DEPT.: TIME:

1. Attached to this order is a *Capacity Declaration—Conservatorship* (form GC-335)
   ☐ and a *Major Neurocognitive Disorder 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 authority to make placement and medication decisions related to treatment of a major neurocognitive disorder (including dementia).
   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).

Form Adopted for Mandatory Use
Judicial Council of California
GC-334 [Rev. January 1, 2019]

EX PARTE ORDER RE COMPLETION OF CAPACITY DECLARATION—HIPAA
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1220, 1825, 1890, 1893, 2356.5;
42 U.S.C. §§ 1177, 1178;
45 C.F.R. §§ 160, 164
www.courts.ca.gov

CONSERVATORSHIP OF *(Name):* PROPOSED CONSERVATEE	CASE NUMBER:

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 Attachment to Capacity Declaration—Conservatorship* (form GC-335A) *(name each 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:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		**DRAFT Not approved by the Judicial Council**
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE		
CAPACITY DECLARATION—CONSERVATORSHIP		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 (such as 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 disorders (including 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 license ☐ with at least two years' experience in diagnosing and treating major neurocognitive disorders (including dementia).
   b. ☐ an accredited practitioner of a religion that calls for reliance on prayer alone for healing. The (proposed) conservatee is an adherent of my religion and is 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)

Form Adopted for Mandatory Use
Judicial Council of California
GC-335 [Rev. January 1, 2019]

Probate Code, §§ 811, 813, 1801, 1825, 1881, 1910, 2356.5
www.courts.ca.gov

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE	CASE NUMBER:

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 ☐ PERSON ☐ ESTATE OF *(Name):* ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE	CASE NUMBER:

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**	☐	**b**	☐	**c**	☐	Euphoria	**a**	☐	**b**	☐	**c**	☐	Helplessness	**a**	☐	**b**	☐	**c**	☐
Anxiety	**a**	☐	**b**	☐	**c**	☐	Depression	**a**	☐	**b**	☐	**c**	☐	Apathy	**a**	☐	**b**	☐	**c**	☐
Fear	**a**	☐	**b**	☐	**c**	☐	Hopelessness	**a**	☐	**b**	☐	**c**	☐	Indifference	**a**	☐	**b**	☐	**c**	☐
Panic	**a**	☐	**b**	☐	**c**	☐	Despair	**a**	☐	**b**	☐	**c**	☐							

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)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* CONSERVATEE		
PETITION FOR EXCLUSIVE AUTHORITY TO GIVE CONSENT FOR MEDICAL TREATMENT		CASE NUMBER:

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

   a. the conservatee be adjudged to lack the capacity to give informed consent to medical treatment or healing by prayer.

   b. the conservator of the person be granted the exclusive authority to give consent to 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 license ☐ an accredited practitioner of a religion that relies on prayer alone for healing.

   d. ☐ orders related to the care and treatment of a major neurocognitive disorder (such as dementia) as specified in the *Attachment Requesting Special Orders Regarding a Major Neurocognitive Disorder* 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):* CONSERVATEE	CASE NUMBER:

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)

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE	CASE NUMBER:

ATTACHMENT TO FORM GC-335, *CAPACITY DECLARATION—CONSERVATORSHIP,* ONLY FOR (PROPOSED) CONSERVATEE WITH A MAJOR NEUROCOGNITIVE DISORDER

9. It is my opinion that the (proposed) conservatee ☐ HAS ☐ does NOT have a major neurocognitive disorder (such as 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 disorders (including 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 disorders (including dementia).
(list medications, approved indications, and other standard medical uses; 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 disorders (including 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 disorders (including 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 disorders (including 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)

Form Adopted for Mandatory Use
Judicial Council of California
GC-335A [Rev. Jan. 1, 2019]

MAJOR NEUROCOGNITIVE DISORDER ATTACHMENT TO CAPACITY DECLARATION—CONSERVATORSHIP

Probate Code, §§ 811, 2356.5
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

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

CONSERVATEE

ORDER AUTHORIZING CONSERVATOR TO GIVE CONSENT FOR MEDICAL TREATMENT

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 (such as 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 to any 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-perimeter residential care 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 disorders (including dementia) as described in Probate Code section 2356.5(c).

5. Total boxes checked in items 2–4: _____

6. Number of pages attached: _____

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Form Adopted for Mandatory Use
Judicial Council of California
GC-385 [Rev. January 1, 2019]

Probate Code, § 1880 et seq.
www.courts.ca.gov

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
1.	Patricia M. Bye Private Fiduciary and Probate Paralegal	AM	There is no mention of how the cases which are already on file and/or Letters issued under the old forms will be treated. Please address this.	The committee appreciates the comment. The committee does not intend the change in terminology to affect the validity of existing forms already on file. Orders and letters issued on existing forms will remain in full force and effect. The legislative history of SB 413 indicates the intent to update the statutory language to conform to the terminology used in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* without making a substantive change. To the extent that the term "major neurocognitive disorder" might comprise a broader range of disorders than the term "dementia," effecting an expansion of the category of disorders covered by Probate Code section 2356.5, existing orders and letters granting "dementia" powers would remain within the scope of the amended statutory authority and, therefore, continue in full force and effect.
2.	Orange County Bar Association Newport Beach by Nikki P. Miliband, President	A	No specific comment.	The committee appreciates the bar association's comment. No further response is required.
3.	County of Tulare Public Guardian's Office, Visalia by Francesca Barela, Deputy Public Guardian	A	I think it is important that we continue to stay up to date with terminology and I agree with the proposed changes.	The committee appreciates the comment. No further response is required.
4.	Executive Committee, Trusts & Estates Section (TEXCOM), California Lawyers Association by Chris Carico, Attorney at Law El Segundo & Saul Bercovitch, Director of	AM	TEXCOM generally supports the proposed changes to the Judicial Council Forms for Conservatorships and Guardianships that would generally replace the term "dementia" with the term "major neurocognitive disorder (dementia)" but with a slight change to reflect	The committee appreciates TEXCOM's comment. The committee agrees with the suggestion and has modified its recommendation to insert "including" or "such as" into the text of the forms.

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
	Governmental Affairs San Francisco		the fact that not all major neurocognitive disorders are technically dementia. With this in mind, TEXCOM believes the proposed language to be inserted in the place of the word dementia in the Judicial Council forms should be modified to add the word "including" so that it instead reads: "major neurocognitive disorder (including dementia)." TEXCOM also supports the change in terminology in those same forms deleting the term "psychotropic" as used in the phrase "psychotropic medications appropriate to the care of dementia" and changing the phrase to "medications appropriate to the care and treatment of major neurocognitive disorder (dementia)." However, for the same reason discussed above, we recommend the addition of the word "including" so that the phrase reads: "medications appropriate to the care and treatment of major neurocognitive disorder (including dementia)." The authors of DSM-5 and affiliated working groups found that while the underlying diseases previously described as "dementia" are subsumed under "Major Neurocognitive Disorder," the new term MNCD has an intentionally broader application as well. They specifically noted that the term included	The committee agrees with the suggestion and has modified its recommendation to insert "including" or "such as" to qualify "dementia" when appropriate.

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
			younger individuals with "dementia-like" symptoms secondary to traumatic brain injury and various disease processes such as AIDS. "Although dementia is the customary term for disorders like the degenerative dementias that usually affect older adults, the term neurocognitive disorder is widely used and often preferred for conditions affecting younger individuals, such as impairment secondary to traumatic brain injury or HIV infection." (See Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) at page 591, also citing the work of The Neurocognitive Disorders Work Group of the American Psychiatric Association's DSM-5 Task Force. These individuals have been previously described as having "Major Neurocognitive Disorder" but not "dementia." Accordingly, while no one with what has in the past been diagnosed as "dementia" would be excluded from this change in definition, there is a greater inclusion of individuals that had forms of Major Neurocognitive Disorder not traditionally defined as dementia. The DSM-5 authors were clear that the focus in bringing these together under MNCD was due to the common cluster of cognitive impairment symptoms. The Legislature was made aware of this, and presumably intended in revising Probate Code section 2356.5 to provide conservators with expanded options in placement and	

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
			administration of psychotropic medications to deal with the confusion, agitation, and problematic behavior of those with significant cognitive impairment, whether due to Alzheimer's or Traumatic Brain Injury.	
5.	Superior Court of Los Angeles County (no name provided)	A	LASC is concerned that the use of the term "major neurocognitive disorder" might imply that any diagnosed condition is severe. While it may be outside of the purview of this input regarding the current proposal, and recognizing that the DMS-5 now uses the term "major neurocognitive disorder," the concern is that the currently-used term "dementia" is almost always qualified by words such as "mild" or "moderate" or "severe." The DMS-5, as modified, provides for those same modifiers, but there is concern that an allegation or diagnosis such as "mild major neurocognitive disorder" will be misleading as always meaning a severe level, or at least will be confusing. Other than the concerns set forth above, these proposed changes appear to be well thought-out and executed in the form language and LASC supports the changes. ***Would the proposal provide cost savings? If so, please quantify.*** It is not apparent that LASC would enjoy a cost savings caused by the proposed changes. ***What would the implementation requirements be for courts?***	The committee understands that the *DSM-5* divides neurocognitive disorders (NCDs) into three classes: delirium, mild NCDs, and major NCDs. It divides *major* NCDs further into three subclasses: "mild major," "moderate major," and "severe major" NCDs. The committee agrees that the two overlapping uses of "mild" in the *DSM-5* are confusing, but nevertheless believes it sufficiently clear that the Legislature intended section 2356.5 to apply to all major NCDs, without regard to subclass, and only to *major* NCDs. For example, section 2356.5 could, if circumstances warranted, authorize the secure placement or involuntary medication of a conservatee with a "mild major NCD." But the statute does not, in any circumstances, authorize the secure placement or involuntary medication of a conservatee with only a "mild NCD." The committee intends "major NCD" in the forms to apply to the same range of NCDs as does the statute. No further response is required.

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
			Implementation of these proposed changes might cause minimal one-time changes to the document names in the court case system, though any significant retraining or systematic changes caused by these changes is not anticipated. ***Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** A two month approval period by the Judicial Council for the proposed changes would appear to be sufficient for LASC, especially since LASC and other courts usually allow a transition time during which expired Judicial Council forms are accepted. It may take beyond this time period, however, for Guide & File and other automated document programs to be modified by other agencies. ***How well would this proposal work in courts of different sizes?*** The changes will work well in a large court such as LASC.	No further response is required. No further response is required. No further response is required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	***Q: Does the proposal appropriately address the stated purpose?*** Yes. ***Q: Should the 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***	The committee appreciates the court's comment. No further response is required.

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

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

	Commentator	Position	Comment	Committee Response
			2356.5(c) and current usage on other forms? Yes. This is consistent with the language in the Probate Code.	No further response is required.
			Q: Would the proposal provide cost savings? No.	No further response is required.
			Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Updates to the filing document names in the case management system would be needed. Additionally, our court would need to update packets and stock of any printed forms. Our court may also need to update information on the website. Training would be minimal.	No further response is required.
			Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No further response is required.
			Q: How well would this proposal work in courts of different sizes? This proposal should work fine in courts of all sizes.	No further response is required.

Item number: 33

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

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

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 24, 2017
Project description from annual agenda: Proposal to develop new Judicial Council forms to facilitate transfer of conservatorships to and from California under the California Conservatorship Jurisdiction Act (Prob. Code §§ 1980–2033; added by Stats. 2014, ch. 553), to revise and simplify registration forms, and to clarify necessary jurisdictional facts.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

Title
Probate Conservatorship: Interstate Transfer

Rules, Forms, Standards, or Statutes Affected
Approve forms GC-363, GC-364, GC-365, GC-366, GC-367, and GC-368

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 9, 2018

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends approving six Judicial Council forms for optional use in proceedings to transfer conservatorships into and out of California under the California Conservatorship Jurisdiction Act (CCJA). The CCJA, enacted in 2014, provides the exclusive basis for determining whether a California court, rather than a court of another state, has jurisdiction to appoint a probate conservator. It also establishes a complex, multi-step process for transferring a conservatorship proceeding from one state to another. These forms are intended to help attorneys, self-represented litigants, and courts protect the interests of conservatees while navigating the transfer process as efficiently and effectively as possible.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2019, approve:

1. *Petition for Transfer Orders* (form GC-363);
2. *Provisional Order for Transfer* (form GC-364);
3. *Final Order Confirming Transfer* (form GC-365);

4. *Petition for Orders Accepting Transfer* (form GC-366);
5. *Provisional Order Accepting Transfer* (form GC-367); and
6. *Final Order Accepting Transfer* (form GC-368).

These forms are for optional use in proceedings to transfer probate conservatorship proceedings between states, as defined, in accordance with the requirements of the California Conservatorship Jurisdiction Act (CCJA). (*SB 940; Stats 2014, ch. 553*.) The CCJA applies only to general probate conservatorships. It does not apply to proceedings for the care or protection of a minor child, a person with a developmental disability, or a person subject to involuntary mental health care or treatment. (Prob. Code, § 1981.)[1]

The forms are attached at pages 6–15.

Relevant Previous Council Action

The Judicial Council, effective January 1, 2016, adopted three forms for mandatory use to register an out-of-state conservatorship in California under the CCJA. The council also adopted revisions to form GC-310, *Petition for Appointment of Probate Conservator,* to incorporate the CCJA's jurisdictional requirements for the initial appointment of a conservator in California.

Analysis/Rationale

Transfer of California conservatorship to another state

The CCJA authorizes a conservator appointed by a California court to petition the court to transfer the conservatorship to another state (the receiving state). (*Id.*, § 2001(a).) The court must hold a noticed hearing to determine whether the court in the receiving state will accept the conservatorship and must make specific findings regarding the conservatee's presence in or significant connections to the receiving state, objections to the transfer, the conservatee's interests, and the arrangements for care of the conservatee's person or property in the receiving state. If it makes these findings, the court must issue an order provisionally granting the petition and direct the conservator to petition the court in the receiving state to accept the conservatorship. (*Id.*, § 2001(d)–(f).) Proposed form GC-363, *Petition for Transfer Orders,* solicits the information the court needs to make the required findings. Proposed form GC-364, *Provisional Order for Transfer,* provides a framework for the court to make all necessary findings and issue a provisional order in conformance with the statutory requirements.

Once the California court has issued a provisional transfer order, the conservator must then file a petition similar to the one required by section 2002(a), described below, in an appropriate court of the receiving state. If the petition to accept the conservatorship in the receiving state is provisionally granted, the conservator must then file that provisional order and all documents,

[1] Unless otherwise specified, all statutory references are to the Probate Code.

including any accounting, required to terminate the conservatorship in California. The California court must then issue a final order confirming the transfer and terminating the conservatorship in California. (*Id.,* § 2001(g).) Proposed form GC-365, *Final Order Confirming Transfer,* provides a framework for the court to issue that order.[2]

Transfer of out-of-state conservatorship into California

The CCJA also authorizes a conservator appointed in another state, on issuance of an order provisionally transferring a conservatorship proceeding to California, to petition an appropriate court in this state to accept the conservatorship. (*Id.,* § 2002(a)(1).) The petition must include a certified copy of the provisional order of transfer, must state on the first page that the conservatorship is not excluded from the CCJA's application, and must allege facts showing that the CCJA applies and the requirements for transfer are satisfied. (*Id.,* § 2002(a)(2)–(3).) The petition must also specify any modification needed to conform the conservatorship to California law and include the terms of a proposed final order accepting the conservatorship. (*Id.,* § 2002(a)(4).) A petition for appointment of a temporary conservator may also be filed while this petition is pending. (*Id.,* §§ 1994(a)(3), 2002(a)(5).) Proposed form GC-366, *Petition for Orders Accepting Transfer,* is intended to capture all the information required to be provided in the petition.

After filing, the petitioner must give notice of the initial hearing on the petition to all persons who would be entitled to notice if the petition were a petition for initial appointment of a conservator in both California and the transferring state, as well as any attorney representing the conservatee in either state. (*Id.,* § 2002(b).) Any person entitled to notice may object to the petition on one or more of four specific grounds: that (1) transfer would be contrary to the conservatee's interests; (2) under the law of the transferring state, the conservator is ineligible for appointment in California; (3) under California law, the conservator is ineligible for appointment in California, and the petition does not identify a willing and eligible replacement; or (4) the CCJA does not apply to the conservatorship. (*Id.,* § 2002(c); see also § 1981.) The court must promptly appoint an investigator, who must, in turn, promptly investigate the facts related to the specific bases for objection. (*Id.,* §§ 1454, 2002(d), (f).)

Unless the court determines at the initial hearing that any of the specific grounds for objection applies, the court must provisionally grant the petition and set another noticed hearing, no more than 60 days from the date of the provisional order, to determine whether the conservatorship needs modification to conform to California law and to review the conservatorship. (*Id.,* §§ 1851.1, 2002(f), (h).) Proposed form GC-367, *Provisional Order Accepting Transfer,* provides a framework for the court to make the provisional order. Once the court orders

[2] Under California law, the termination of a conservatorship of the estate does not cause the California court to lose jurisdiction over the proceeding for purposes of settling the accounts or enforcing judgments or orders related to accounts or the termination. (Prob. Code, § 2630.) The committee believes this provision applies to termination in the event of transfer in the absence of an express statutory exception.

provisional acceptance, the appointed court investigator must promptly begin a full review investigation under section 1851.1, which incorporates and augments the requirements for a review investigation under section 1851.[3] (*Id.*, §§ 1851, 1851.1, 2002(g).)

At the modification and review hearing—which the conservatee must attend unless excused—the court may take any action necessary to bring the conservatorship into conformity with California law, including striking or modifying any unauthorized powers. (*Id.*, §§ 1851.1, 2002(h)(1).) The court must also consider specific findings in the investigator's report, including whether the conservatee wishes to petition for termination of the conservatorship, whether the conservatorship is still necessary, and whether the conservator is acting in the conservatee's best interests. (*Id.*, §§ 1851(a), 1851.1(c), 2002(h)(2).) The court may take any appropriate action in response to the investigator's report. (*Id.*, § 1851.1(c).) Proposed form GC-368, *Final Order Accepting Transfer,* gives the court the opportunity to specify any necessary modifications and to make the findings in response to the investigator's report.

If the court determines that the conservatorship may be modified to conform to California law, and the review indicates that the conservatorship remains necessary, then once the court has received a final order transferring the conservatorship to California, it must issue a final order accepting the transfer and appointing a conservator in California. (*Id.*, § 2002(i).) Proposed form GC-368 also provides a framework for this final order.

Policy implications

The forms in this proposal establish one method for implementing the statutory requirements for transferring a conservatorship proceeding into or out of California. This method is intended to protect vulnerable persons subject to conservatorship by facilitating the provision of complete and accurate information to California probate courts, the effective communication between courts of different states, and the ongoing protection of the rights and well-being of conservatees regardless of their state of domicile. These policies are consistent with the language and purposes of the existing legal framework in California for the establishment and oversight of conservatorships.

Comments

This proposal was circulated for public comment in the regular winter 2018 comment cycle. The committee received six comments. All the commentators agreed with the proposal; four commentators suggested modifications to the proposal.[4]

The CCJA requires the courts in the transferring state and the receiving state each to make two orders to effect the transfer of a conservatorship: a provisional order and a final order. The

[3] There does not seem to be a legal reason preventing an investigator from completing the investigations required under section 2002(d) and 2002(g) as parts of a single investigation.

[4] One commentator agreed with the proposal if modified, but the comment did not suggest any discernible changes. A chart of all comments received and committee responses is attached at pages 16–32.

proposed forms for orders transferring and accepting transfer of conservatorships were circulated as single forms that combined the provisional order and the final order. Several commentators suggested separating the forms for the provisional orders from the forms for the final orders of transfer and acceptance. The committee has accepted that suggestion and recommends the approval of separate forms for each type of order.

Commentators also suggested changes to list the value of the conservatee's California property, eliminate duplication of information, specify the type of conservatorship at issue, clarify the information sought, and tailor the language in the forms more closely to statute. The committee has revised the forms in response to the issues raised by these comments, though it occasionally departed from the exact terms of the suggested change.

Alternatives considered

The committee considered not recommending the approval of these forms, as they are not expressly required by the CCJA. However, evidence indicates that litigants are experiencing difficulty articulating the jurisdictional facts needed for a probate court to order transfer of a conservatorship from California to another state or to accept the transfer of a conservatorship proceeding from another state. These forms attempt to address this difficulty by soliciting all the necessary facts and information from petitioners in a framework suitable for incorporation into a court order.

Fiscal and Operational Impacts

The implementation requirements and costs of recommended forms remain unclear. Short-term training requirements and costs seem likely. It is possible, though, that court staff would need training to implement the CCJA transfer process even without the forms. All but one of the commenting courts indicated that three months from the date of adoption would be sufficient time to implement the new forms. One court, the Superior Court of Riverside County, indicated that it would take six months to implement them.

Once implemented, the forms are likely to promote more efficient court operations and use of judicial resources. By soliciting the information needed to support a petition to transfer a conservatorship to or from California, the forms should lead to both faster and better-informed adjudication of transfer petitions. In particular, they will reduce the number of issues needing to be addressed in probate notes or at hearings as well as the frequency and duration of continuances. The forms should also promote access to justice for both conservators and conservatees by facilitating both a faster transfer process and the ongoing protection of the conservatee's interests.

Attachments and Links

1. Forms GC-363, GC-364, GC-365, GC-366, GC-367, and GC-368, at pages 6–15
2. Chart of comments, at pages 16–32
3. Link A: Senate Bill 940 (Stats. 2014, ch. 553), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB940*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		
PETITION FOR TRANSFER ORDERS (California Conservatorship Jurisdiction Act)		CASE NUMBER:

1. I, *(name):* ,
   (address):

   (telephone): *(e-mail):* ,
   the conservator of the ☐ person ☐ estate in California for the person identified in 2, request that the court order this proceeding transferred to *(name of state):* (the receiving state).

2. Conservatee's personal information
   Name:
   Residence address:

   (telephone): *(e-mail):*
   ☐ The conservatee is not developmentally disabled.
   ☐ The conservatee is not receiving involuntary mental health care or treatment.

3. For a conservatorship of the person:
   a. Conservatee's relationship to receiving state (Note: Establishment of the conservatee's residence outside California requires a prior court order (See Prob. Code, § 2352(c) & (d)(2).))
      (1) ☐ The conservatee is physically present in the receiving state *(describe circumstances):*

      (2) ☐ The conservatee plans to move permanently to the receiving state on *(date):* .
      Conservatee's planned residence address in receiving state (if different from address in 2):

   b. I have made, or plan to make, the following arrangements for the conservatee's care in the receiving state *(describe):*

      ☐ Continued on attachment 3b. *(Attach a separate sheet of paper or form MC-025).*

   c. I have arranged for the provision of the following services to the conservatee in the receiving state *(describe services):*

      ☐ Continued on attachment 3c. *(Attach a separate sheet of paper or form MC-025).*

Form Approved for Optional Use
Judicial Council of California
GC-363 [New January 1, 2019]

Probate Code, § 2001
www.courts.ca.gov

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

4. For a conservatorship of the estate:
   a. Conservatee's relationship to the receiving state:
      (1) ☐ The conservatee is physically present in or plans to move permanently to the receiving state. *(Give address in 3a.)*
      (2) ☐ The conservatee has the following connection(s) to the receiving state *(describe all connections):*
         (a) The following family members and other persons entitled to notice of the proceedings live in the receiving state *(name and address of each):*

         ☐ Continued on Attachment 4a(2)(a). *(Use a blank sheet of paper or form MC-025.)*
         (b) The conservatee has been present in the receiving state for a total of months from *(date first arrived):* to *(date last departed):* . During that time, the conservatee was absent from the receiving state for a total of months.
         (c) The conservatee holds a legal or beneficial interest in the following property located in the receiving state *(describe each piece of property and give street address of real property or location of personal property):*

         ☐ Continued on Attachment 4a(2)(c). *(Use a blank sheet of paper or form MC-025.)*
         (d) ☐ The conservatee has the following friends and social ties in the receiving state *(name and address of each):*

         ☐ Continued on Attachment 4a(2)(d). *(Use a blank sheet of paper or form MC-025.)*
         (e) ☐ The conservatee receives public benefits or services in or from the receiving state *(list each):*

         ☐ Continued on Attachment 4a(2)(e). *(Use a blank sheet of paper or form MC-025.)*
         (f) The conservatee has the following additional connections to the receiving state *(if a social security number or other account number is needed to document a connection, list only the last 4 digits. (Cal. Rules of Court, rule 1.201(a).)):*
            ☐ Registered to vote in the receiving state
            ☐ Filed state tax return in receiving state *(year(s) filed):*
            ☐ Filed local tax return in receiving state *(year(s) filed):*
            ☐ Registered vehicle in receiving state *(description of vehicle):*

            ☐ Driver's license issued by receiving state
            ☐ Other ties *(describe each):*

            ☐ Continued on Attachment 4a(2)(f). *(Use a blank sheet of paper or form MC-025.)*
   b. The petitioner has made the following arrangements for management of the conservatee's property in the receiving state *(describe all arrangements):*

      ☐ Continued on attachment 4b. *(Attach a separate sheet of paper or form MC-025).*

(If you have been appointed conservator of both the person and estate for the person named in 2, complete both 3 and 4, above.)

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

5. Objections *(complete a or b):*
   a. ☐ The petitioner is not aware of any objection to the proposed transfer.
   b. ☐ The petitioner knows of or anticipates objections to the proposed transfer.

6. The proposed transfer would be in the best interests of the conservatee for the following reasons *(give reasons):*

   ☐ Continued on attachment 6. *(Use a blank sheet of paper or form MC-025).*

7. The conservatorship is likely to be accepted by the court in the receiving state because *(give reasons):*

   ☐ Continued on attachment 7. *(Use a blank sheet of paper or form MC-025).*

8. Status of reports, accountings, or other documents, if any, required to terminate the California conservatorship:

   ☐ Includes documentation of payment of all fees and costs, including attorney's fees.
   ☐ Continued on attachment 8. *(Use a blank sheet of paper or form MC-025).*

Date filed:
If not yet filed, date expected:

Date:

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

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

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

Date:

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

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

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		
PROVISIONAL ORDER FOR TRANSFER (California Conservatorship Jurisdiction Act)		CASE NUMBER:

1. The court held a hearing on a petition to transfer this conservatorship proceeding to *(state):* , (the receiving state) on *(date):* .

The court finds that:

2. Notice of the hearing was given as required by law.

3. Based on the evidence presented, it is likely that a court of record in the receiving state will accept the transfer of this conservatorship proceeding.

4. a. ☐ The conservatee is ☐ physically present in ☐ reasonably expected to move permanently to the receiving state.
   b. ☐ The conservatee has a significant connection to the receiving state based on the factors in section 1991(b), as described in item 4a(2) of the *Petition for Transfer Orders* (form GC-363).

5. a. ☐ No objection to the petition to transfer has been filed or heard, or
   b. ☐ Notwithstanding all filed objections to the petition, the transfer would not be contrary to the conservatee's interests.

6. [Person] The plans for the care of and provision of services to the conservatee in the receiving state are reasonable and sufficient.

7. [Estate] The arrangements made for the management of the conservatee's property are adequate.

The court orders that:

8. The petition to transfer the conservatorship to the receiving state is provisionally granted.

9. The conservator is directed to file a petition for acceptance of the conservatorship in an appropriate court in the receiving state.

10. The conservator is directed, within 5 court days of receipt of the receiving state court's provisional order accepting the transfer, to file with this court a certified copy of that order and all documents required to terminate the conservatorship in California.

Date:

▶ _____
(JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		
FINAL ORDER CONFIRMING TRANSFER (California Conservatorship Jurisdiction Act)		CASE NUMBER:

The court finds that:

1. This court issued an order provisionally transferring this conservatorship proceeding to *(state):* (the receiving state) on *(date):* .

2. On *(date):* , the court received a provisional order accepting the transfer of this conservatorship issued under provisions similar to Probate Code section 2002 by the court to which the proceeding is to be transferred.

3. The court has received and, if appropriate, approved all documents, including any required accounting, needed to terminate the conservatorship in California.

The court orders that:

4. The transfer of this conservatorship proceeding to the receiving state is confirmed.

5. The California conservatorship of the ☐ person ☐ estate is terminated.

Date:

▶ _____
(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
GC-365 [New January 1, 2019]

Probate Code, § 2001
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF *(name):* CONSERVATEE		
PETITION FOR ORDERS ACCEPTING TRANSFER (California Conservatorship Jurisdiction Act)		CASE NUMBER:

1. Protected person's (e.g., conservatee's or ward's) personal information:

   Name:
   Residence Address:

   Telephone: E-mail:

2. I, *(name):*
   was appointed the conservator or guardian for the person named in 1 by a court of record of the state of *(specify):* (the transferring state) on *(date):* . My appointment remains in effect.

3. ☐ The California Conservatorship Jurisdiction Act (CCJA; Prob. Code, §§ 1981–2033), applies to this proceeding because the protected person:
   - Is 18 years of age or older;
   - Is NOT involuntarily committed to a mental health facility or receiving any other involuntary mental health care or treatment; and
   - Has NOT been been diagnosed or assessed with a developmental disability.

4. ☐ A certified copy of the provisional order of transfer issued by a court of record in the transferring state is attached to this form.

   The existing protective proceeding is best described under California law as *(check all that apply):*

   a. ☐ A conservatorship of the person *(The court order gives me powers and duties to manage the protected person's needs for food, clothing, shelter, or health care.)*

   b. ☐ A conservatorship of the estate *(The court order gives me powers and duties to manage the protected person's finances and property.)*

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

5. Factors relevant to determining the jurisdiction of the California court:

a. ☐ The conservatee has been physically present in California since *(date):* and remains present in California.

b. ☐ The conservatee was physically present in California from *(date):* to *(date):* , ending within six months of the date this petition is filed.

c. ☐ The conservatee has the following connections to California *(list all that apply):*

(1) ☐ The following relatives and other persons required to receive notice of the proceeding reside in California:

☐ Continued on Attachment 5c(1). *(Use a blank sheet of paper or form MC-025.)*

(2) ☐ The conservatee was physically present in California during the following periods:

From *(date):* to *(date):*
From *(date):* to *(date):*
From *(date):* to *(date):*
From *(date):* to *(date):*

☐ Continued on Attachment 5c(2). *(Use a blank sheet of paper or form MC-025.)*

(3) ☐ The conservatee will move permanently to California and reside at the following address *(provide if known):*

(4) ☐ The conservatee holds a legal or beneficial interest in the following property located in California *(describe each piece of property; give the street address of real property or the location of personal property):*

☐ Additional property is described on Attachment 5c(4). *(Use a blank sheet of paper or form MC-025.)*

(A) Estimated value of real property in California: $
(B) Estimated value of personal property in California: $
(C) Annual gross income from
(i) Real property: $
(ii) Personal property: $
(iii) Pensions: $
(iv) Wages: $
(v) Public assistance benefits: $
(vi) Other: $
Subtotal of (C): $
(D) **Total** of (A), (B), and (C): $

(5) ☐ The conservatee has the following other ties to California *(for example, voter registration, driver's license, tax filing):*

☐ Continued on Attachment 5c(5). *(Use a blank sheet of paper or form MC-025.)*

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

6. I request that the court:

   a. Accept transfer of this proceeding and recognize the transferring state's conservatorship order.

   b. (1) ☐ Appoint me as conservator of the ☐ person ☐ estate under California law for the person named in 1, or
   (2) ☐ Appoint *(name):*
   (mailing address):

   (telephone number): *(e-mail):*
   (relationship to conservatee): , who is eligible for appointment under California law,
   as conservator of the ☐ person ☐ estate for the person named in 1.

   c. (1) ☐ Adopt the transferring state's conservatorship order, which needs no modification to conform to California law.
   (2) ☐ Issue a new conservatorship order, as proposed on the attached *Order Appointing Probate Conservator* (form GC-340), which modifies the terms of the conservatorship as follows to conform to California law:

   (A) Powers modified:

   (B) Duties modified:

   (C) Bond modified:

   (D) Other information needed:

   ☐ Additional modifications are included on Attachment 6c(2). *(Attach a blank sheet of paper or form MC-025.)*

   d. Issue *Letters of Conservatorship* (form GC-350) on the appointee's qualification.

7. ☐ A *Petition for Appointment of Temporary Conservator* (form GC-111) is filed with this petition.

8. ☐ The conservatee ☐ has ☐ has not been diagnosed with a major neurocognitive disorder (MNCD, a.k.a. dementia).

   a. ☐ A completed *Petition for Exclusive Authority to Give Consent for Medical Treatment* (form GC-380), with *Attachment Requesting Special Orders Regarding Major Neurocognitive Disorder (Dementia)* (form GC-313), is filed with this petition.

   b. ☐ I intend to petition the court for MNCD/dementia powers under section 2356.5 of the Probate Code as soon as the court issues a final order accepting transfer of this conservatorship.

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

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		
PROVISIONAL ORDER ACCEPTING TRANSFER (California Conservatorship Jurisdiction Act)		CASE NUMBER:

1. The court held a hearing on a petition to accept the transfer of this conservatorship proceeding from *(state):* (the transferring state) on *(date):* .

2. The court has read and considered the report of the preliminary investigation conducted under section 2002(d), which was filed on *(date):* . Based on the report and all other evidence before the court,

THE COURT FINDS THAT:

3. Notice of the hearing was given as required by law.

4. ☐ The California Conservatorship Jurisdiction Act applies to these proceedings. This court has jurisdiction to appoint a conservator, including a temporary conservator, in these proceedings under sections 1993 and 1994 of the Probate Code.

5. ☐ The transfer of the conservatorship proceeding to California would not be contrary to the conservatee's interests.

6. ☐ Under the law of the transferring state, the conservator is eligible for appointment in California.

7. a. ☐ Under California law, the conservator is eligible for appointment in California; or

   b. ☐ Under California law, the conservator is **not** eligible for appointment in California but the petition has identified a person who is willing to serve as conservator and is eligible for appointment in California.

8. A court of record in the transferring state has issued a provisional order transferring this proceeding to California.

THE COURT ORDERS THAT:

9. The petition to accept the transfer of this conservatorship proceeding to California is provisionally granted.

10. The court investigator must complete the investigation required by Probate Code section 1851.1 and report its findings in writing as required under section 1851(b)(1) no fewer than 15 days before the date of the hearing set in 7.

11. A hearing is set in this department on *(date):* , no more than 60 days from the date of this order, to determine whether the conservatorship needs to be modified to conform to California law and to review the conservatorship. The conservatee must attend that hearing unless excused under sections 1825 and 1851.1(c) of the Probate Code.

Date:

▶ _____
(JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		
FINAL ORDER ACCEPTING TRANSFER (California Conservatorship Jurisdiction Act)		CASE NUMBER:

1. The court held a hearing to review the conservatorship and determine its conformity to California law on *(date):* .
2. The court has read and considered the report of the review investigation conducted under section 1851.1, which was filed on *(date):* . Based on the information in the report and all other evidence admitted at the hearing,

THE COURT FINDS THAT:

3. ☐ Notice of the hearing was given as required by law.
4. The conservatee ☐ attended ☐ was excused under Probate Code section 1825 and did not attend the hearing.
5. (1) ☐ No modification to the original conservatorship order is needed to conform to California law.
   (2) ☐ Modifications to the conservatorship order are necessary to conform to California law and are ordered on the attached *Order Appointing Probate Conservator* (form GC-340).
6. ☐ The conservatee does not wish to petition for termination of the conservatorship.
7. ☐ The conservatee does not object to the appointment of the person identified below as conservator in California.
8. ☐ The conservatee was informed of the rights to attend the hearing and to be represented by legal counsel of one's choice or, if desired, by counsel appointed by the court.
9. ☐ The conservatorship is still the least restrictive alternative necessary to protect the conservatee's interests.
10. ☐ Other *(specify):*

    ☐ Additional findings are set forth on Attachment 5c(1).

11. The court has received a final order issued by a court of record in *(state):* confirming the transfer of the conservatorship to California.

THE COURT ORDERS THAT:

12. The transfer of the conservatorship proceeding to California is accepted.
13. Name:
    Address:
    Telephone: E-mail:
    is appointed conservator of the ☐ person ☐ estate for *(name):*
    under California law as specified in the accompanying ☐ original conservatorship order ☐ form GC-340.
    The clerk is ordered to issue *Letters of Conservatorship* (form GC-350) when the appointee has qualified under section 2002(i)(2).

Date:

▶ _____
(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
GC-368 [New January 1, 2019]

FINAL ORDER ACCEPTING TRANSFER
(California Conservatorship Jurisdiction Act)

Probate Code, §§ 1851.1, 1993–1994, 2002
www.courts.ca.gov

W18-08

Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Nikki P. Miliband, President	AM	**Form GC-363** It is suggested that the type of conservatorship being transferred be identified in the caption area, below the title of the form, by including two checkboxes, one for "person" and one for "estate." It is believed this would facilitate case management and administration. As proposed, the language at Item 3 indicates it is to be completed for all conservatorships, yet only seeks information relevant to a conservatorship of the person. It is suggested that an Item 3a(3) be inserted, with a checkbox and the language, "[t]he conservatee has significant connection(s) to the receiving state as set forth at Item 5a(2)." This modification would then include a conservatorship of the estate at Item 3 and make it relevant to all conservatorships. Correspondingly, it is suggested that the language at Item 5a(1) be modified to read, "[s]ame as stated in 3a(1), (2)." **Form GC-364** It is suggested that the type of conservatorship being transferred be identified in the caption area, below the title of the form, by including two checkboxes, one for "person" and one for "estate." It is believed this would facilitate case management and administration.	The committee agrees and has incorporated the suggested change into its recommendation. The committee recognizes that items 3, 4, and 5 were confusing and has revised them to address the commentator's concerns. Item 3 now solicits information needed to support the transfer of a conservatorship of the person. Item 4 solicits information needed to support the transfer of a conservatorship of the estate. To the extent that item 4 calls for information that could be entered in item 3 (for example, the conservatee's current or planned physical location is a factor relevant to transfer of both conservatorships of the person (Prob. Code, § 2001(d)(1)[1]) and conservatorships of the estate (*id.*, § 2001(e)(1))), cross-references are used to avoid the need for entering duplicate information. The committee agrees and has specified the type of conservatorship in the caption box above the form title.

[1] Unless otherwise specified, all further statutory references are to the Probate Code.

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Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
			At Item 3, between the words "to" and "the" there is extra space, as there is at Item 5 between the words "contrary" and "to."	The committee does not recommend the suggested change to item 3, now 4. The current spacing is consistent with Judicial Council style guidelines, which call for extra space following a choice indicated by two or more check boxes. The committee has revised item 5, now 6, to clarify the relationship between the check boxes.
			To avoid confusion in the event only the conservatorship of an estate not involving a non-resident conservatee is being transferred, it is suggested that Items 3 and 4 be combined so that there would be no Item with checkboxes unchecked. Such a situation could raise questions as to omissions or the completeness of the form. This modification, if adopted, would necessitate the renumbering of subsequent Items.	The committee agrees and has incorporated the suggestion to combine items 3 and 4 and renumber subsequent items into its recommendation.
			It is also suggested that additional space be provided following Item 4 to allow the listing of all the conservatee's significant connections with the receiving state.	The committee does not recommend the suggested change. It has revised item 4 to dispense with the need for the court to list the conservatee's connections with the receiving state.
			At Item 11, to avoid confusion or possible over-inclusion, it is suggested that the type of conservatorship be identified. Accordingly, it is suggested that language at Item 11 be modified to read: "[t]he California conservatorship of the [ ] person [ ] estate is/are terminated." **Form GC-365**	The committee agrees and has incorporated the suggestion into its recommendation.

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Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
			It is suggested that the type of conservatorship being transferred be identified in the caption area, below the title of the form, by including two checkboxes, one for "person" and one for "estate." It is believed this would facilitate case management and administration. **Form GC-366** It is suggested that the type of conservatorship being transferred be identified in the caption area, below the title of the form, by including two checkboxes, one for "person" and one for "estate." It is believed this would facilitate case management and administration. **Response to Specific Request:** Yes, as modified, the proposal appropriately addresses the stated purpose. No comments are offered at this time, as to any needed additional forms.	The committee does not recommend the suggested change at this time because the transferring state's laws may use different terminology to identify and describe the protective proceeding. Item 4 asks the petitioner to identify the proceeding based on the powers and duties given in the existing order. If a more precise description of the proceeding proves necessary, the committee will consider revising the forms accordingly. The committee agrees and has incorporated the suggested change into its recommendation. No response required. No response required.
2.	Santa Clara County Department of Family and Children's Services by Francesca Larue, Director	A	The proposal addresses transfer of conservatorship proceedings into and out of California under the California Conservatorship Jurisdiction Act (CCJA). This Act provides the exclusive basis for determining whether a California court, as opposed to a court of another state, has jurisdiction to appoint a probate conservator. The proposed forms would be available for optional use in probate	The committee appreciates the comment. No further response is required.

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Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
			proceedings, and because the CCJA applies only to general probate conservatorships and does not apply to proceedings for the care of protection of a minor child (or a person subject to involuntary mental health care or treatment), we are highly unlikely to encounter the Act in our work. Implementation of the new forms has no implication on the work of DFCS.	
3.	Superior Court of Los Angeles County (no name provided)	AM	The Proposed forms GC-364 and GC-366 include two possible Orders. The forms should be drafted as four individual stand-alone forms, instead of two forms. Not only might it confuse the public and staff, but the proposed format creates problems for eFiling reasons. Unless the orders are signed and processed simultaneously, the two orders will require two separate file stamp dates. Unless the proposed forms are modified, the forms will create work flow problems in the eFiling environment.	The committee agrees and has incorporated the suggested change into its recommendation.
			What would the implementation requirements be for courts? Notwithstanding the above comments, the effort and cost to implement the proposal will not be significant. Clerical staff and judicial assistants will require less than 1 hour of training.	No response required.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Three months is sufficient time to implement the proposal.	No response required.

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

W18-08

Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
4.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	**Petition to Transfer Probate Conservatorship (GC-363)** No additional comments.	No response required.
			Orders Transferring Probate Conservatorship (GC-364) The proposed GC-364 has a Provisional Order and a Final Order transferring the conservatorship in one all-inclusive form. We recommend that the proposed Provisional and Final Orders be separate forms as the parties often submit proposed Orders (electronically) and the Provisional Order will be generated and filed first before the Final Order. Additionally, a certified copy of the Provisional Order is to be attached to the Petition to Accept Transfer, thus, requiring a stand-alone Order.	The committee agrees and has incorporated the suggested change into its recommendation.
			The Final order form could be in a similar format to the ex parte petition for discharge (GC-395): a single document that alleges eligibility for the final order, attaches copies of the documents necessary for the final order, and includes a space for the judge to make the final order.	The committee does not recommend a combined petition and final order at this time. The statute seems to require only a single petition for transfer orders. The court's duty to issue a final order of transfer arises on its receipt of the receiving state's provisional order accepting the transfer and the documents required to terminate the conservatorship in California. The proposed provisional order form, GC-364, includes an order directing the conservator to file those documents with the California court within 5 court days of receipt. That filing would trigger the court's duty to issue the final order in response to the initial petition. In addition, commentators have indicated that, for purposes of entry into electronic case

	Commentator	Position	Comment	Committee Response
				management systems, petitions and orders should be on separate documents or forms. Finally, in a conservatorship of the estate, the termination of the conservatorship does not cause the court to lose jurisdiction over the proceedings. (Prob. Code, § 2630.) Because the conservator would still need to file a petition for final discharge on form GC-395, requiring an additional petition for a final transfer order seems unduly burdensome. The comment seems to highlight a broader issue: whether a uniform statewide form petition to terminate a conservatorship would be useful. The committee will explore this question in the future.
			The language in form GC-364 should more closely track the language in Probate Code 2001(a)(2) to avoid the inference that the filing of a final accounting is always required. There may be situations where the California court determines that no final accounting is required in California because the conservatee's estate qualified under Probate Code 2628 for the duration of the applicable accounting period. The language in the statute better accommodates this situation, as it refers to the "documents required to terminate a conservatorship in this state, including, but not limited to, any required accounting." This expressly recognizes that there are situations where an accounting is not required. The language in the form should be modified to read as follows: "The court has received and, if	The committee agrees and has modified its recommendation to incorporate the suggested change.

	Commentator	Position	Comment	Committee Response
			appropriate, approved all documents required to terminate conservatorship in this state, including, but not limited to, any required accounting." The GC-364 form asks for the name of the destination state in two locations (items 2 and 8). The forms should be revised to only collect this data in one location, and either reference or infer the information in the other location. **Petition to Accept Transfer of Probate Conservatorship (GC-365)** We recommend that item 5c of this form mimic the Character and Estimated Value of the property of the estate (GC-310, Item 3e (2)–(4)) to identify the proper value of the conservatorship estate/property being transferred and for use in determining bond. **Orders Accepting Transfer of Probate Conservatorship (GC-366)** The proposed GC-366 form has a Provisional Order and a Final Order accepting transfer of the conservatorship in one all-inclusive form. We recommend that the proposed Provisional and Final Orders be separate forms as the parties often submit proposed Orders (electronically) and the Provisional Order will be generated and filed first before the Final Order. The Final order form could be in a similar	 The committee has separated the provisional order and the final order into separate forms. The name of the receiving state is now collected once on each form. The committee agrees and has modified the form to request the estimated value of the property in California that belongs to the conservatee's estate. The committee agrees and has modified its recommendation to incorporated the suggested change. The committee does not recommend the

	Commentator	Position	Comment	Committee Response
			format to the ex parte petition for discharge (GC-395): a single document that alleges eligibility for the final order, attaches copies of the documents necessary for the final order, and includes a space for the judge to make the final order.	suggested change. Many courts have informed the committee that combining a petition or request and an order in a single form is incompatible with their electronic case management systems.
			The GC-366 form asks for the name of the transferring state in two locations (items 2 and 4). The forms should be revised to only collect this data in one location, and either reference or infer the information in the other location.	The committee has separated proposed form GC-366 into two forms: GC-367 for a provisional order and GC-368 for a final order. Each form asks for the name of the transferring state once.
			We would ask that the language in form GC-366 item 5 be omitted or modified to accommodate a court that elects to conduct the investigations required by Probate Code 2002(d) and (g) simultaneously as a single investigation prior to the hearing on the petition to accept transfer.	The committee has modified its recommendation to delete the order to begin the investigation under sections 1851.1 and 2002(g). The order now requires only timely *completion* of the investigation before the hearing under section 2002(h)(3) to review the conservatorship and determine whether it conforms to California law. Completion of both the section 2002(d) and 2002(g) investigations before the initial petition hearing under section 2002(e) seems sufficient to comply with the statute and the order.
			We recommend adding to the form Order an item 7 to state "The conservator must attend the Conservatorship Orientation Class per Probate Code Section 1457 unless excused for good cause." Since not all counties have a Conservatorship Orientation class, we further recommend that this item should have a checkbox making it optional.	The committee does not recommend the suggested change. Section 1457 requires the Judicial Council to develop and make available to nonprofessional conservators and guardians a video or online educational program. Section 1457 does not require a conservator to watch the program, let alone attend an "orientation class." Neither does it authorize the court to require a

	Commentator	Position	Comment	Committee Response
				conservator to watch the program or attend a class. Section 2002(i)(2) specifies the conditions, including receipt and acknowledgment of the material described in sections 1834 and 1835, that a conservator must meet to be appointed in California after the court has accepted a transfer under the CCJA. The committee has modified its recommendation to require compliance with section 2002(i)(2).
			• Would additional forms be useful to facilitate the transfer of conservatorship proceedings into and out of California? If so, please identify the function or purpose of those forms. The proposed forms GC-363, GC-364, GC-365 and GC-366 appear adequate to facilitate the transfer of a conservatorship proceedings into and out of California.	No response required.
			• Would the proposal provide cost savings? If so please quantify. It is undetermined what cost savings would be captured. However, as the transfers into and out of California is a 2-step process (provisional and final orders), it would seem that there may be additional costs and court time associated with the new process whereas currently, a new Petition for Conservatorship is a 1-step process (i.e., oftentimes one hearing to establish)	The committee recognizes that the process required by the CCJA is cumbersome, but understands that the Legislature viewed it as needed to protect the rights of conservatees who need to move to another state or who hold property in more than one state. The proposed optional forms do not impose a process on the courts; instead, they provide one option for litigants and courts to navigate the statutory process as efficiently and effectively as possible.
			• What would the implementation	

	Commentator	Position	Comment	Committee Response
			requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. The implementation requirement would include training staff, revising processes and procedures as well as adding docket codes in the case management system. The modification to the case management system by adding docket codes and/or modification would take the support team for the case management system approximately 4–8 weeks to update the system. Once the case management system is updated, revising processes and procedures (i.e., desk procedures, court processing, calendaring the petition type) would need to be implemented. It would be estimated that 8 weeks would be required for these tasks. Training staff would estimate to be 4–8 weeks. Total implementation: 24 weeks (6 months) **• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?**	The committee appreciates the thoroughness of this comment. The committee intends, by proposing these forms for optional rather than mandatory use, to give the courts the necessary flexibility to implement them without undue time pressure. Courts that have begun to implement the CCJA's requirements may be able to incorporate the forms into their case processing framework more quickly than those that haven't.

W18-08

Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
			With the case management system updates, a better projected time for implementation is 6 months. **• How well would this proposal work in courts of different sizes?** It appears the proposal may work consistently for all courts of varying sizes as it is a streamline approach to transferring conservatorship proceedings into and out of California.	Please see previous response. No response required.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	***Q: Does the proposal appropriately address the stated purpose?*** A: Yes ***Q: Would additional forms be useful to facilitate the transfer of conservatorship proceedings into and out of California? If so, please identify the function or purpose of those forms.*** A: Yes, as mentioned in the General Comments section, it would be helpful to have an informational sheet, in plain language, that explains when a Conservatorship would be ineligible for transfer, under Probate Code section 1981. Additionally, it would be helpful to explain the step-by-step process of petitioning one court, getting a provisional order, petitioning the new court, getting an order then obtaining final orders in each court.	No response required. The committee has revised form GC-366, the petition to accept transfer, to include a notice box on the first page describing when the CCJA applies. The committee will also consider developing an information sheet to accompany the CCJA transfer forms. The committee agrees and will direct staff to develop a road map or similar content on the California courts self-help website explaining the CCJA transfer process.

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

W18-08

Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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

	Commentator	Position	Comment	Committee Response
			Q: Would the proposal provide cost savings? If so, please quantify. A: No. The petitions would be filed regardless, the one benefit is that it may reduce the amount of time the Court Investigators and Probate Examiners spend trying to read through a petition on pleading. ***Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.*** A: The filings would need to be added to CCMS-V3, which is minimal impact. We would also have to train Court Investigators, Examiners and front-line staff. This would probably be less than 2 hours of training. ***Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** A: Yes. ***Q: How well would this proposal work in courts of different sizes?*** A: Our court does not see the size of the court playing a factor in this proposal. ***General Comments:*** Our Court has found the transfer process under	No response required. No response required. No response required. No response required. The committee recognizes that the process

	Commentator	Position	Comment	Committee Response
			the CCJA to be overly cumbersome, requiring multiple petitions, hearings and court investigations. Prior to the CCJA, the parties could file a Petition to Fix Residence to accomplish a similar goal and then establish a Conservatorship in the other state by filing a brand new petition.	required by the CCJA is cumbersome, but understands that the Legislature viewed it as needed to protect the rights of conservatees who need to move to another state or who hold property in more than one state. The proposed optional forms do not impose a process on the courts; instead, they provide one option for litigants and courts to navigate the statutory process as efficiently and effectively as possible.
			It would be helpful to include an informational sheet, in plain language, that clearly defines all ineligibilities for transferring a case under CCJA, as listed in Probate Code section 1981.	See response to suggestion for informational sheet, above.
			GC-363—Petition to Transfer Probate Conservatorship • Include boxes for the petitioner to indicate conservatorship of the person and/or estate in the header with the case title.	The committee agrees with the suggestion and has incorporated it into the recommendation.
			• Require the name of the county to be included as well as the state at item 1.	The committee does not recommend the suggested change at this time. Even if the petitioner knows the name of the correct county, the courts in the receiving state may not be organized by county as California's courts are.
			• After item 1 or 2, include a box for the petitioner to make a clear allegation that the conservatee is not developmentally disabled or subject to involuntary mental health care or treatment. Either of these would render the case ineligible for transfer.	The committee agrees and has added the suggested check box to item 2.

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Probate Conservatorship: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366)

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	Commentator	Position	Comment	Committee Response
			• Item 3.a.(2) - Rephrase "Same as stated in 2" to "Not yet determined" for the conservatee's address in receiving state.	The committee does not recommend the suggested change. The conservatee may already have moved to the receiving state at the time the petition is filed. The committee has added an instruction to enter "to be determined" in the "Other" box if the conservatee does not yet have a residential address in the receiving state.
			• At time 3b, how can the petitioner make allegations re objections before the petition is filed and served on parties who could possibly object?	The committee has revised item 5 better to reflect the state of the petitioner's knowledge at the time of filing.
			• Item #5.a.(2)(a) – The lines provided for persons entitled to notice are not adequate and will require an attachment.	The committee has added language prompting the petitioner to continue on an attachment.
			• Item #6 seems like an unnecessary statement, since items 3,4 & 5 clearly state whether it's a question for the Conservator of the Person or Estate. One could assume if they held both roles, they should answer each question.	The committee has replaced item 6 with an instruction to complete the information for both items 3 and 4 if the conservator was appointed in both capacities. The committee prefers that the form give express instructions to the petitioner.
			• Item #7 would benefit from the prompting: "For a conservatorship of the estate:"	The committee has expanded the scope of item 8 to request information about any reports or activities, including accountings, that are required to terminate the conservatorship.
			• Item #7, it is unclear what information is being requested by, "Date expected." Date accounting is expected to be filed, heard, approved? Or does it apply to the payment	The committee has clarified that "Date expected" should be completed only if the required information has not yet been filed.

	Commentator	Position	Comment	Committee Response
			question above?	
			• There should be signature lines for an attorney and multiple petitioners, in the event there are co-conservators.	The committee agrees and has added signature lines for an attorney and another petitioner.
			GC-364—Orders Transferring Probate Conservatorship	
			• Correction of first sentence "The court held a hearing on a petition…"	The committee has revised the language in item 1.
			• Revise item 3 to read: The conservatee 0 is physically present in 0 is reasonably expected to move permanently to 0 has a significant connection to the receiving state.	The committee has combined items 3 and 4 consistent with this comment.
			• Remove item 4 as this factor is only considered when the conservatorship is of the estate only. It can be captured by revising item 3 as suggested above.	See response to comment on item 3.
			• Revise item 5 to read: 0 No objection to the transfer has been made or 0 an objection has been made and the court determines that the transfer would not be contrary to the conservatee's interest.	The committee has revised item 5 in response to this and other comments.
			• Item #5 – There appears to be an unnecessary space between the words "contrary" and "to".	The committee has removed the extra space.
			• Our court likes the idea of combining the two orders into one form, but question the practicality. Is the thought that both orders	The committee agrees that fewer forms would be desirable, but has determined, as suggested, that the combination of the provisional order and the

	Commentator	Position	Comment	Committee Response
			would be completed on the same page? For courts that image, that would mean printing the provisional order to have the final order signed and then we would have to rescan it. Does it retain the file-date from the first order date? Are we then modifying our register of Actions if we replace the image?	final order on a single form would be impractical. The committee has revised its recommendation to split the orders into separate forms.
			GC-365—Petition to Accept Transfer of Probate Conservatorship	
			• Item #1 – the font size in the 'Residence Address' lines is too small and the lines are unnecessarily long.	Committee staff has verified that the fillable field for entering a residence address accommodates Arial 9pt type, the standard font and size for Judicial Council forms. The committee does not recommend making the lines shorter.
			• Item #5.c.(4) should mirror item # 5.a.(2)(d) in GC-363.	The committee agrees and has modified its recommendation accordingly.
			• There should be signature lines for an attorney and multiple petitioners, in the event there are co-conservators.	The committee agrees and has added signature lines for an attorney and an additional petitioner.
			GC-366—Orders Accepting Transfer of Probate Conservatorship	
			As stated under GC-364, our court likes the idea of combining the two orders into one form, but question the practicality.	The committee agrees that fewer forms would be desirable, but has determined, as suggested, that the combination of the provisional order and the final order on a single form would be impractical. The committee has revised its recommendation to split the orders into separate forms.
6.	Nghi Tran San Jose	AM	In this day and age, financial crimes begin with stalking victims, block attacks, misdirection,	The committee intends the recommended forms to enable the California court efficiently and

	Commentator	Position	Comment	Committee Response
			poison to incapacitate or to affect memories of the unsuspected, defamation, and court proceedings comes when they want to legally move the money out of state and then country. It is illegal to take property when the only evidence relied on are assumptions filed on paper that may give a partial truth. The power of authority only apply to the order given at that time of directed duty in that specified time which usually is to deliver sensitive documents on their behalf. Law enforcement should be called upon immediately to protect, inform, and investigate the value of their estate, to notify such victims personally because investigation is inevitable. Financial criminals will first use assignments to transfer, if that fails they may corrupt our banking system, co-mingling lottery annuities with mortgage deposits, turn virtual credits into bitcoins, a public campaign to cause distrust of law enforcement so victims will not report, tamper with vehicles then report it as a public complaint causing class actions just to cover suspicion by victims, cause family members to file bankruptcy to gain ISP investments, and more. Do inform utilizing media to locate unknown victims. Any objections, reasons, or opposition by the conservator or conspirators is a red flag.	effectively to oversee the lawful transfer of conservatorship proceedings into and out of the state to ensure that conservatees are protected as much as the law allows possible from abuse. To the extent that the comments raise concerns about substantive law and policy, the committee believes they are better directed to the Legislature. To the extent that the comments raise concerns about the violation of existing law, the committee believes they are better directed to the appropriate law enforcement agency.

Item number: 34

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Guardianship and Conservatorship: Appointment of Counsel

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

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

Title
Probate Guardianship and Conservatorship: Appointment of Counsel

Rules, Forms, Standards, or Statutes Affected
Approve forms GC-005 and GC-006

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

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 14, 2018

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends approving two forms for optional use for applying for and ordering appointment of counsel for a ward or a proposed ward, a conservatee or a proposed conservatee, including a limited conservatee, or a person alleged to lack legal capacity in a proceeding under division 4 (beginning with section 1400) of the Probate Code, which includes the Guardianship-Conservatorship Law.

Recommendation

The Probate and Mental Health Advisory Committee recommends approving Judicial Council forms GC-005 and GC-006 for optional use, effective January 1, 2019, as follows:

1. Approve form GC-005, *Application for Appointment of Counsel,* to offer parties and interested persons an opportunity to request appointment of counsel under section 1470 or 1471 of the Probate Code.

2. Approve form GC-006, *Order Appointing Legal Counsel,* to offer the courts an efficient method for appointing counsel under section 1470 or 1471 and to include an advisement about the responsibility to pay for the costs of appointed counsel.

The revised forms are attached at pages 5–7.

Relevant Previous Council Action

The Judicial Council has never taken action related to this proposal.

Analysis/Rationale

The probate court holds the authority to appoint counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under division 4 of the Probate Code if the court determines that the person is not represented by counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests. (Prob. Code, § 1470(a).)

In addition, the court is required to appoint counsel for a conservatee, a proposed conservatee, or a person alleged to lack capacity in specified proceedings—that is, those to establish, transfer, or terminate a conservatorship; to appoint or remove a conservator; for a determination and order affecting the legal capacity of the conservatee; or for an order authorizing removal of a temporary conservatee from that person's residence—in two sets of circumstances.

First, the court must appoint counsel in those proceedings if the person is unable to retain counsel and has requested that the court appoint counsel. (Prob. Code, § 1471(a).) Second, the court must appoint counsel in those same proceedings if the person has not retained counsel, does not plan to retain counsel, and has not requested that the court appoint counsel, and the court determines that the appointment would either be helpful to resolution of the matter or is necessary to protect the person's interests. (*Id.*, § 1471(b).)

In a proceeding to establish a limited conservatorship for a developmentally disabled adult, including a proceeding to modify or revoke the powers or duties of a limited conservator, the court must immediately appoint counsel for the person unless the person has already retained, or plans to retain, counsel. (Prob. Code, § 1471(c); see *id.*, § 1431.) Finally, the court must appoint counsel for a conservatee or person alleged to lack legal capacity in proceedings under other scattered sections of division 4 of the Probate Code, some of which refer back to section 1471 and some of which do not. (See, e.g., *id.*, §§ 1852, 2356.5, 2357, 3101, 3201.) The court investigator is typically responsible for informing the conservatee of the circumstances in which the court is authorized or required to appoint counsel, determining whether any of those circumstances exists, and including that information in the report. (See *id.*, §§ 1826, 1851.1.)

In many cases, the court does not learn of circumstances warranting appointment of counsel for a (proposed) ward, conservatee, or other protected person until shortly before or at the hearing on the petition. Appointment of counsel at that stage of the proceedings requires a continuance to allow the appointed counsel to meet with the client and become familiar with the case. Probate courts and other stakeholders have indicated that appointment of counsel as early as possible in a

proceeding would promote more efficient and informed case management and better protect the legal rights of persons subject to guardianship, conservatorship, or a determination of lack of legal capacity. The need is particularly acute in limited conservatorship proceedings, in which the court is required to appoint counsel *immediately* if the proposed limited conservatee has not retained counsel and does not plan to retain counsel. (Prob. Code, § 1471(c).)

By offering a simple procedure to notify the court before the hearing that appointment of counsel may be legally warranted, the recommended forms, *Application for Appointment of Counsel* (form GC-005) and *Order Appointing Counsel* (form GC-006), will promote more effective representation, reduce delays, and allow more efficient disposition of protective proceedings. The application, form GC-005, solicits information about the person requesting appointment, the person to be represented, the type of proceeding, and the circumstances justifying or requiring the appointment of legal counsel under section 1470 or 1471 of the Probate Code. The applicant may file the form with the petition or, if not the petitioner, at any point after the filing of the petition. Nothing precludes more than one applicant from requesting appointment of counsel. This flexibility would bring the need for appointment of counsel to the court's attention as early as possible in the proceeding.

The order, form GC-006, gives the court the opportunity to make findings of the facts and circumstances justifying or requiring appointment of counsel, order the appointment, and, if appropriate, identify the attorney appointed. The form is proposed for optional use. It does not preclude the court from using other mechanisms to appoint counsel. If the form is used, copies of the order can be kept in the case file and given to the appointed attorney and the client for their reference.

Policy implications

In addition to implementing the council policies of updating rules and forms to conform to current law and practice and promoting equal access to justice, this recommendation promotes more effective legal representation of persons subject to protective proceedings in California courts.

Comments

This recommendation circulated for comment as part of the winter 2018 invitation-to-comment cycle, from December 15, 2017, to February 9, 2018, to the standard mailing list for rules and forms proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, and other court staff and probate professionals. Four courts, three individuals, and three organizations provided comment. Three commentators agreed with the proposal. Seven commentators agreed and offered suggestions for further revisions. The committee incorporated most of the suggestions into its recommendation and made additional technical and clarifying changes consistent with those suggestions. A chart with the full text of the comments received and the committee's responses is attached at pages 8–16.

The committee requested comment on whether a single combined form or separate application and order forms would work more effectively. Four commentators, all courts or court-connected professionals, preferred separate forms; one commentator thought that a single form would be more efficient. The other two courts that commented did not express a preference, but did suggest including some of the information relevant to appointment of counsel on the petition. The Superior Court of San Diego County commented that it would not use the forms because they already have a local form that serves the same function. Based on the weight of the comments, particularly those that raised issues of compatibility with case managements systems, the committee elected to separate the application and the order into two forms.

Two commentators from San Diego, a private attorney and a probate attorneys' organization, suggested adding an item to the order to authorize the appointed attorney to have access to the client's private records and information, including medical records. The committee agreed that an appointed attorney should have the same access to a client's private records as a retained attorney and added an item to that effect to the order form. The ex parte authorization of access to records protected by state or federal confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is beyond the scope of this proposal and deserves careful consideration. The committee will take up this issue when developing its annual agenda for 2019.

Alternatives considered

As discussed above, the committee considered recommending a single form but was persuaded to separate the application form from the order form by the weight of comment and the additional flexibility provided by a separate order form. The committee also considered not recommending approval of any forms, but all commentators agreed that forms would be helpful, even if their own court would not use them.

Fiscal and Operational Impacts

Implementation will require courts that choose to use the form order to program their case management systems to recognize or generate it. Any training costs are expected to be minimal. Use of the application form by petitioners and others early in the proceeding may reduce the need to continue hearings to allow appointed counsel to gain familiarity with the case.

Attachments and Links

1. Forms GC-005 and GC-006, at pages 5–7
2. Chart of comments, at pages 8–16

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		
APPLICATION FOR APPOINTMENT OF COUNSEL ☐ **GUARDIANSHIP** ☐ **CONSERVATORSHIP** ☐ **Limited**		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. I am *(name of applicant):* the *(check all that apply):*
   a. ☐ Petitioner.
   b. ☐ Guardian or proposed guardian.
   c. ☐ Conservator or proposed conservator.
   d. ☐ Ward or proposed ward.
   e. ☐ Conservatee or proposed conservatee.
   f. ☐ Other *(specify):*

2. I request appointment of counsel in this proceeding under division 4 of the Probate Code to represent:
   (name):
   (address):
   (telephone number): *(e-mail):*
   who is *(check all that apply):*
   a. ☐ A ward or proposed ward.
   b. ☐ A conservatee or proposed conservatee.
   c. ☐ A person alleged to lack capacity.
   d. ☐ A proposed limited conservatee.

3. ☐ The person named in 2 has not retained and does not plan to retain counsel, and is not otherwise represented by counsel.

4. ☐ Appointment of counsel to represent the person named in 2 would help to resolve the matter because *(explain):*

5. ☐ Appointment of counsel to represent the person named in 2 is necessary to protect the person's interests because *(explain):*

6. ☐ This is a proceeding described in Probate Code section 1471(a)(1)–(5), 1852, 2356.5, 2357, 3101, or 3201 *(specify):*

7. ☐ This is a proceeding to establish a limited conservatorship or to modify or revoke the powers or duties of a limited conservator.

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

Date:

▶ _____
(SIGNATURE OF APPLICANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		
ORDER APPOINTING LEGAL COUNSEL ☐ **GUARDIANSHIP** ☐ **CONSERVATORSHIP** ☐ **Limited**		CASE NUMBER:

1. Person for whom counsel is appointed:
   (name):
   (address):
   (telephone number): *(e-mail):*
   is *(check all that apply):*
   a. ☐ A ward or proposed ward.
   b. ☐ A conservatee or proposed conservatee.
   c. ☐ A person alleged to lack capacity.
   d. ☐ A limited conservatee or proposed limited conservatee.

The court finds that:

2. ☐ The person named in 1 has not retained legal counsel and is not otherwise represented by counsel in this proceeding.

3. a. ☐ The appointment of counsel would be helpful to the resolution of this matter.
   b. ☐ The appointment of counsel is necessary to protect the interests of the person named in 1.
   c. ☐ The appointment of counsel is required by statute irrespective of the considerations in a or b.

The court orders that:

4. ☐ As determined by local procedure, the next available attorney who has certified his or her qualifications to the court and has no known conflict of interest is appointed to represent the person named in 1 as counsel of record in this proceeding.
   Attorney *(name):*
   Firm, agency, or office *(name):*
   (address):
   (telephone number): *(e-mail):*
   (State Bar number):

5. ☐ To the same extent as an attorney retained by the client, the attorney appointed in 4 is authorized to inspect and obtain copies of records pertaining to the client's education, physical or mental health, or any other matter relevant to the proceeding.

Date:

▶ _____
JUDICIAL OFFICER

(See the next page for important information.)

CASE NAME:	CASE NUMBER:

NOTICE

At the end of the proceeding, the court will determine a reasonable amount to pay the appointed attorney.

- If the client is a minor child, the court will order the child's parent or parents or the child's estate to pay as much of that amount as is just and they are able to pay.
- If the client is an adult, the court will order the client or the client's estate to pay as much of the amount as the client is able to pay.
- If the court determines that no one who is legally responsible for payment is able to pay the amount or any part of it, the county will be responsible for paying the part that is unpaid.
- The Judicial Council has published guidelines for determining whether a person is able to pay the appointed attorney as Appendix E to the California Rules of Court.

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
1.	Hon. Tari L. Cody, Judge Superior Court of Ventura County	AM	I suggest the application and order be separate. There are times when counsel is appointed for a minor ward during hearing even though no formal application has been submitted. Having a separate order would allow the court to sign the order without a formal application.	The committee agrees and has separated the order from the application.
2.	County of Santa Clara Department of Family and Children's Services by Francesca LeRue, Director	A	Proposal W18-09 is issued for public comment relating to Probate Law: Appointment of Counsel. The proposal has been reviewed by Santa Clara County Department of Family and Children's Services (DFCS) who is in agreement with the proposal. Our comments are below: 1. The proposal deals solely with appointment of probate counsel in probate proceedings, and has no impact on DFCS' work. A form has been created for optional use in order to apply for and appoint counsel for a conservatee, a proposed conservatee, or a person alleged to lack capacity in specified proceedings. The form is straightforward and clear and we don't have any suggested changes.	The committee appreciates the comment. No further response is required.
3.	Keri Griffith, Sr. Manager, Operations Juvenile & Probate Courthouse Superior Court of Ventura County	AM	I would like to comment on form GC-005 with respect to the impact on filing clerks. As a general rule, I find that creating separate forms is preferred when a clerk must work with a document that has multiple purposes, and particularly ones that are signed by a judicial officer. In this instance, when the application (GC-005)	The committee agrees with the suggestion and has separated the order from the application.

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

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
			is submitted to the court, if not acted on by the judicial officer immediately, it should be filed in the case and entered into the CMS. Subsequently, when the order appointing counsel is made, a separate order should be filed and entered into the CMS. Having the order on the same form with the application makes it difficult to work with because the judicial officer should not sign an order on a document that has already been filed. Unless the intention is for the application to go directly to a judicial officer. Therefore, I would suggest the creation of two separate forms, one for the application and one for the order.	
4.	Orange County Bar Association Newport Beach by Nikki P. Miliband, President	A	Yes, the proposal appropriately addresses the stated purpose. It is believed one form is more efficient, than two separate documents would be. No comments are offered at this time, as to any needed rule amendments or form revisions.	The committee appreciates the comment. No further response is required. Based on comments received from judges and court staff and anticipating that the order will frequently be issued without an application having been filed, the committee has revised its recommendation to separate the application and the order. No further response is required.
5.	Probate Attorneys of San Diego by Gary D. Jander, President	AM	As an organization of Probate Attorneys, we support the creation of the new form. San Diego Probate Court created a similar form which they have been using for years.	The committee appreciates the organization's comment.

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
			On behalf of the Board of Directors of the Probate Attorneys of San Diego, we respectfully request that additional language be added to the to make the proposed form more useful to Court Appointed Counsel as follows: "This Order shall authorize the attorney to inspect and obtain copies of records he or she believes are relevant to the client, including but not limited to, records maintained by any school, hospital, medical facility, mental health facility, treatment program, doctor or other social or human services agency. In addition, this Order shall authorize the attorney to communicate in writing or in person with personnel from any school, hospital, medical facility, mental health facility, treatment program, doctor or other social or human services agency, including topics that are confidential or otherwise subject to HIPAA privacy laws." Such language will eliminate the need for court-appointed counsel to file motions or ex parte petitions after their appointment in order to obtain the necessary records or information needed to represent their clients.	The committee agrees in principle with the suggestion and has added language to the recommended order authorizing the appointed attorney to have the same level of access to the client's confidential records and information as would a retained attorney. Authorizing appointed counsel to have unrestricted access to educational, health care, and other sensitive records is beyond the scope of this proposal.
6.	Anne Rudolph Hughes & Pizzuto San Diego	AM	In San Diego, we have a local form that includes the following helpful language for the court-appointed attorney: "This order shall authorize the attorney to	The committee appreciates the comment. See response to comment 5, above.

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

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
			inspect and obtain copies of records he/she believes are relevant to the client, including, but not limited to, records maintained by any school, hospital, medical facility, treatment program, doctor, or other social or human services agency." This would be helpful to include on the proposed Judicial Council form.	
7.	Superior Court of Los Angeles County (no name provided)	AM	**Would two separate forms—one for the application and one for the order—promote more efficient case management?** The proposed form GC-005 should be drafted as two separate forms with different form numbers. With the implementation of eFiling, the need for Orders to be created as stand-alone documents is critical for the work flows to be effective. This request should be considered in every instance where the application or request is combined with an Order as one document. Otherwise, courts will incur additional costs with enhancement requests. **What would the implementation requirements be for courts?** Notwithstanding the above comment, the proposal will not add costs and the impact to the court will be minimal.	The committee agrees and has separated the order from the application. No response required.
8.	Superior Court of Monterey County by Monica Mitchell, Research Attorney	AM	Thank you for creating this form. In limited conservatorship cases, which are often being handled by self-represented litigants, the procedure for appointment of counsel is not	The committee appreciates the court's comment.

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

	Commentator	Position	Comment	Committee Response
			standardized throughout the state. In Monterey County, the Self-Help Program developed a template which could be used in forms programs to request appointment of counsel. Other counties must have similar pleading templates.	
			1. Two forms should be created—one for guardianship and one for conservatorship. The form will be less confusing if it is limited to one subject. For guardianship appointments, it would be important to notify the applicant about the possible payment of attorney fees under Probate Code Section 1470(c)(3) and that a parent might have to pay. There is no similar provision for conservatorship cases. Further, appointment in a guardianship case is discretionary and many courts may not have the resources to routinely appoint counsel in those cases.	The creation of separate appointment forms for guardianship and conservatorship proceedings is beyond the scope of this proposal. The committee will discuss creating separate form sets—one for guardianship proceedings and another for conservatorship proceedings—when developing its 2019 annual agenda.
			2. It would be helpful to add the Probate Code Section number to Item 3 (Probate Code § 1470).	The committee has modified its recommendation to resolve the issue raised by the comment.
			3. Dementia appointments are not addressed in the form. See Probate Code Section 2356.5.	The committee has added references to sections 1852, 2356.5, and 2357, all of which require appointment of counsel in specific circumstances.
			4. Instructions should be provided to applicant that a copy of the order of appointment should be delivered to the appointed counsel and Court Investigator, along with a copy of all pleadings	The committee does not recommend the suggested change. Court procedures for communicating with appointed counsel vary from court to court. The committee has recommended

	Commentator	Position	Comment	Committee Response
			filed.	the forms for optional use to accommodate that variety. Imposition of a single statewide procedure absent a demonstrated benefit would be inappropriate. Appointment of, and communication with, the court investigator is beyond the scope of this proposal.
9.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	The GC-005 form could be a helpful tool for a petitioner to advise the court of a need for appointment of counsel that arises after a petition for appointment has already been filed. However, the form would not be useful to most courts for situations where appointment of counsel is mandatory due to the relief requested in the petition. In those situations, the interests of judicial efficiency would usually require appointment at the time the petition was filed whether or not this form is supplied. The GC-005 form does not capture information as to whether the conservatee or proposed conservatee has already retained counsel, or intends to do so. For mandatory appointments, this would be useful information that would indicate reasons why the court should not appoint counsel at the time the petition was	The committee appreciates the court's comments. The committee intends that the application might be filed by petitioners, with or after the petition, or by other interested persons after a petition is filed. The committee has modified its recommendation to separate the application form from the order. This separation would allow the court to use the order form to appoint counsel when the petition was filed even if no application is made. However, the committee takes no position on whether appointment of counsel is ever required based solely on the relief requested in the petition. As the commentator recognizes in its next comment, most, if not all, of the statutory provisions mandating appointment of counsel appear to condition that duty on the prospective client's lack of existing or planned representation. The committee has modified the application form to solicit the suggested information. If the committee has further occasion to revise the petition form, it will consider soliciting that information there, too.

	Commentator	Position	Comment	Committee Response
			filed. However, if this data were to be collected it would be seem more efficient to supply it on the petition to appoint a conservator rather than on an additional form.	
			Does the proposal appropriately address the stated purpose? Yes.	No further response is required.
			Would two separate forms—one for the application and one for the order—promote more efficient case management? No.	In response to comments from other courts and practitioners, the committee has separated the application and the order into two forms.
			Are additional rule amendments or form revisions needed to address issues related to appointment of counsel in guardianship or conservatorship proceedings, including limited conservatorships? For mandatory appointments it would be seem more efficient to capture information as to whether the conservatee or proposed conservatee has already retained counsel or intends to on the petition to appoint a conservator rather than on an additional form.	Revisions to form GC-310, the petition to appoint a conservator, are beyond the scope of this proposal. The committee will consider providing an opportunity to capture this information on the petition form the next time it considers revisions to that form.
			Would the proposal provide cost savings? No.	No further response is required.
			What would the implementation requirements be for courts? Minimal training for court staff that choose to utilize this form.	No further response is required.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No further response is required.

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? No difference.	No further response is required.
10.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	*Q: Does the proposal appropriately address the stated purpose?* A: Yes. *Q: Would two separate forms—one for the application and one for the order—promote more efficient case management?* A: No. *Q: Are additional rule amendments or form revisions needed to address issues related to appointment of counsel in guardianship or conservatorship proceedings, including limited conservatorships? If so, please specify.* A: No. *Q: Would the proposal provide cost savings? If so, please quantify.* A: No. *Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.* A: If the form is optional, our court will not likely adopt it, so there would be no training required or procedure to revise. We would continue to generate the form out of our case management system, shortly after the case is filed.	The committee appreciates the court's comments. No further response to this comment is required. In response to comments from other courts and practitioners, the committee has separated the application and the order into two forms. No further response is required. No further response is required. The committee recommends that the Judicial Council approve the forms for optional use. No further response is required.

W18-08

Probate Law: Appointment of Counsel (approve form GC-005)

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

	Commentator	Position	Comment	Committee Response
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.	No further response is required.
			Q: How well would this proposal work in courts of different sizes? A: This may be better suited for smaller courts with less volume. Tracking these application and orders in a high-volume court would be time-consuming.	The committee recommends that the Judicial Council approve the forms for optional use. Approval for optional use would allow local courts to determine whether to use the order form or a different method of appointing counsel that better suits their needs.
			General Comments: There is not a need for these forms in our court. Our court reviews each conservatorship when filed and generates an order out of our case management system, when applicable. Adding these forms, to an already complicated packet of conservatorship forms to be filled out by the party, seems like adding an unnecessary step.	See response to previous comment.

Item number: 35

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS.

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

Staff contact (name, phone and e-mail): Greg Tanaka; 415-865-7671; gregory.tanaka@jud.ca.gov; Frances Ho; 415-865-7662; frances.ho@jud.ca.gov; Patrick O'Donnell; 415-865-7665; patrick.o'donnell@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 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.

SB 204 (Dodd; Stats. 2017, ch. 98) Domestic violence: protective orders. Effective January 1, 2018, this legislation allows for domestic violence protection orders issued in a Canadian civil court to be registered and enforced in California through Family Code sections 6450–6460.

Civil and Small Claims Advisory Committee Annual Agenda:
Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on issues within the advisory committee's purview and, where appropriate, propose rules and forms to implement the legislation or to bring rules and forms into conformity with it.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS

Rules, Forms, Standards, or Statutes Affected
Amend rules 1.51 and 2.503; adopt form DV-630

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn Borack, Cochair
Hon. Mark Juhas, Cochair
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
September 21, 2018

Date of Report
July 31, 2018

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Executive Summary

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending two rules of the California Rules of Court relating to protective orders to (1) include the registration of interstate and tribal court protective orders, Canadian protective orders, and gun violence restraining orders as protective orders that must be submitted to the court with a completed California Law Enforcement and Telecommunications System (CLETS) confidential information form; and (2) add records in gun violence prevention proceedings to the list of electronic court records that are accessible only at the courthouse and not remotely. These changes implement new statutory requirements. The Family and Juvenile Law Advisory committee also recommends the adoption of a new mandatory form to implement

the requirements of Senate Bill 204 (Stats. 2017, ch. 98), which allows domestic violence protection orders issued in a Canadian civil court to be registered and enforced in California.

Recommendation

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Amend rule 1.51 to include interstate and tribal court protective orders, Canadian protective orders, and gun violence restraining orders as requiring submission to the court of a completed *Confidential CLETS Information* form;
2. Amend rule 2.503 to include gun violence prevention proceedings to the list of records that may not be accessed remotely; and
3. Adopt a new mandatory form, *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630), to implement the requirements of Senate Bill 204.

The text of the amended rules is attached at pages 7–10; the new form is attached at pages 11–12.

Relevant Previous Council Action

Rule 1.51 was adopted effective January 1, 2011, to provide direction to the public and the courts on how the *Confidential CLETS Information* form was to be used, who had access to the information on it, and how long courts had to retain the form. An earlier version of rule 2.503 was first adopted in 2002 as rule 2073 to establish statewide policies on public access to trial courts' electronic records while balancing privacy protections and other legitimate interests. Rule 2073 was amended in 2004 and 2005, then renumbered as rule 2.503 and amended in 2007. The rule was subsequently amended three more times to account for the inclusion of additional case types. No previous council action has been taken on Canadian protective orders as Senate Bill 204 enacted new law effective January 1, 2018.

Analysis/Rationale

Amendments to rule 1.51

Rule 1.51(a) lists the protective orders that must be submitted to the court with a completed *Confidential CLETS Information* form. Under the existing rule, the list includes all the protective orders issued under Code of Civil Procedure sections 527.6, 527.8, and 527.85; Family Code section 6320; and Welfare and Institutions Code sections 213.5 and 15657.03.

The list should be updated to reflect additional statutes that provide that other types of protective orders must be entered. The law requires interstate and tribal court protective orders to be entered into CLETS under Family Code section 6404, Canadian protective orders under Family Code

section 6454, and gun violence restraining orders under Penal Code sections 18100–18205.[1] To ensure that all required information from protective orders is properly entered into CLETS, using the *Confidential CLETS Information* form, the statutory sections prescribing the entry of out-of-state, tribal court, Canadian, and gun violence protective orders need to be added to rule 1.51(a).

New form DV-630

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt a mandatory form, *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630), to implement the requirements of Senate Bill 204 (Fam. Code, § 6400 et seq.).

Family Code section 6450 et seq. sets forth the following requirements for registration and enforcement of Canadian domestic violence protection orders in California:

1. ***The order must be issued in a civil proceeding in English (Fam. Code, § 6451(a)).*** Family Code section 6451(a) states that for purposes of the act, " 'Canadian domestic violence protection order' means a judgment or part of a judgment or order issued in English in a civil proceeding by a court of Canada under law of the issuing jurisdiction that relates to domestic violence … ."

   The legislative history of SB 204 states that the law only includes orders issued by civil courts because of the due process concerns raised by enforcing protection orders issued by a foreign country's criminal court system.[2]

2. ***A certified copy of the Canadian protective/restraining order is required (Fam. Code, § 6454(a)).*** A certified copy of a Canadian protective order must be presented to the court for registration. This is different from the statutory procedure under Family Code section 6404 for registration of interstate and tribal court protective orders, which does not require a certified copy.

3. ***The order must be sealed and entered into CLETS (Fam. Code, § 6454(a)).*** Once registered, consistent with the procedures for other foreign domestic violence restraining orders under Family Code sections 6380 and 6404, Canadian protective orders are also required to be:
   a. Entered into CLETS;
   b. Sealed; and

[1] More specifically, Penal Code section 18115(a) prescribes that the court shall notify the Department of Justice when a gun violence restraining order is issued or renewed; section 18115(c) states that the notices shall be submitted electronically in a manner prescribed by the department. The department has directed that CLETS be the procedure for submitting gun violence restraining order information into the California Restraining and Protective Order System (CARPOS). (See CARPOS Manual § 6.4.1.)

[2] Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 204 (2017–2018 Reg. Sess.) July 7, 2017, p. 7.

c. Accessed only by law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

The Family and Juvenile Law Advisory Committee considered revising an existing form, *Order to Register Out-of-State or Tribal Court Protective/Restraining Order (form DV-600)*, to include Canadian protective orders. However, unlike the statutory procedures for registration of interstate and tribal court protective orders, the registration of Canadian protective orders—as described above—requires the submission of a certified copy of the order and is limited to orders issued in civil proceedings. Hence, the committee is recommending that the council adopt a specific new order that expressly satisfies the statutory requirements for the registry of Canadian protective orders.

Amendments to rule 2.503

The Civil and Small Claims Advisory Committee recommends that rule 2.503(c) be amended to add records in gun violence prevention proceedings to the list of electronic records that are not accessible remotely and are available only at the courthouse. This proposal is consistent with the history and purpose of that subdivision.

Rule 2.503 (formerly rule 2074) was adopted in recognition that certain types of cases contain sensitive private information. Although these cases are public records, "unrestricted Internet access to case files would compromise privacy and, in some cases, could increase the risk of personal harm to litigants and others whose private information appears in case files."[3] Hence, to balance the right of public access to trial records against the right of privacy, a rule was adopted that provides that access to certain sensitive types of case records will be provided only at the courthouse.

The original list of case records available only at the courthouse included records in family and juvenile proceedings, guardianship and conservatorship proceedings, mental health proceedings, criminal proceedings, and civil harassment proceedings. Subsequently, rule 2.503(c) has been amended several times. Additional types of records that are presently available only at the courthouse are records in elder and dependent adult abuse prevention proceedings, workplace violence prevention proceedings, private postsecondary school violence prevention proceedings, and proceedings to compromise the claims of a minor. Because gun violence prevention proceedings share many of the same characteristics as the proceedings described above and raise similar privacy and safety concerns, it is appropriate to provide the same type of limited, courthouse-only access for records in these proceedings as for those already included under rule 2.503(c).

The Information Technology Advisory Committee (ITAC) is concurrently recommending amendments to rule 2.503 in its council report entitled "Rules and Forms: Remote Access to

[3] Judicial Council of Cal., Advisory Committee rep., *Public Access to Electronic Trial Court Records* (Oct. 5, 2001), p. 7. The report explains the legal and policy reasons for providing courthouse-only access in certain case types.

Electronic Records." ITAC's amendments make a technical change to the list of electronic records indicated in rule 2.503(b) by changing the number of case types referenced from 9 to 10. This change would correct the inconsistency between subdivision (b) and (c) of rule 2.503, arising from an amendment adding a 10th case type, effective January 1, 2012, without a corresponding amendment cross-referencing the list in rule 2.503(b). The Civil and Small Claims Advisory Committee's current recommended changes to rule 2.503 adds an 11th case type for gun violence prevention proceedings. To reflect this addition, yet another change is required to both the above-mentioned cross-reference in rule 2.503(b) and the list of case types under 2.503(c). To reconcile all of the amendments to rule 2.503 recommended by both the Civil and Small Claims Advisory Committee and the Information Technology Advisory Committee, the committees are jointly proposing one consolidated, amended rule 2.503 for the council's consideration. (See the text of the amended rule at pages 7–10.)

Policy implications

The recommended amendments to rule 1.51 and 2.503 will result in uniform procedures and policy statewide for consistent entry of protective orders into CLETS—submitted with the *Confidential CLETS Information* form—and ensure that the list of case records containing sensitive information that are not remotely accessible to the public is updated and current. The adoption of new mandatory form DV-630 will effectively implement the requirements of Senate Bill 204.

Comments

The proposal circulated for public comment as part of the spring 2018 invitation-to-comment cycle from April 27 through June 8, 2018. During the comment period, the proposal received six comments. All the commenters were in agreement with the proposal with no suggested changes or modifications. The committees recommend that the council approve the amendments to rules 1.51 and 2.503 and the adoption of new mandatory form DV-600. A chart with the full text of the comments received and the committees' responses is attached at pages 13–15.

Alternatives considered

The rule recommendations principally update rules 1.51 and 2.503 to reflect recent developments in the statutes relating to protective orders. While the rules could have been left unchanged, this would create a risk that important information about certain protective orders might not be properly entered into CLETS and that gun violence restraining orders might be made remotely accessible, unlike any other type of protective order. Furthermore, as mentioned above, regarding the development of the form order for registering Canadian protective orders, the Family and Juvenile Law Advisory Committee considered revising the order for registering out-of-state and tribal protective orders to cover this additional type of order but concluded that, based on the unique requirements for registering a Canadian protective order, it would be better to have a separate order for this purpose.

Fiscal and Operational Impacts

The recommended amendments to rule 1.51 relating to entry of orders into CLETS will largely reflect and clarify current practices; hence, they should not require any significant implementation requirements, result in costs for the courts, or have operational impacts. To the extent that any courts currently make gun violence retraining orders available remotely, amending rule 2.503(c) to add such orders to the list of records not available remotely may require some programming; however, the number of such orders available remotely is likely very small. Finally, the adoption of the new *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630) should make it easier for parties to register Canadian protective orders, and for courts to process these orders.

Attachments and Links

1. Cal. Rules of Court, rules 1.51 and 2.503, at pages 7–10
2. Form DV-630, at pages 11–12
3. Attachment A: Chart of comments, at pages 13–15
4. Link A: Senate Bill 204 (Stats. 2017, ch. 98), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB204*

Rules 1.51 and 2.503 of the California Rules of Court are amended, effective January 1, 2019, to read:

Rule 1.51. California Law Enforcement Telecommunications System (CLETS) information form

(a) Confidential CLETS Information form to be submitted to the court

A person requesting protective orders under Code of Civil Procedure section 527.6, 527.8, or 527.85; Family Code section 6320, 6404, or 6454; Penal Code sections 18100–18205; or Welfare and Institutions Code section 213.5 or 15657.03 must submit to the court with the request a completed *Confidential CLETS Information* form.

(b)–(e) * * *

Rule 2.503. ~~Public access~~ Application and scope

(a) General right of access by the public

(1) All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except those that are sealed by court order or made confidential by law.

(2) The rules in this article apply only to access to electronic records by the public.

(b) Electronic access required to extent feasible

A court that maintains the following records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so:

(1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and indexes in all cases; and

(2) All court records in civil cases, except those listed in (c)(1)–~~(9)~~(11).

(c) Courthouse electronic access only

A court that maintains the following records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may not provide public remote ~~electronic~~ access to these records ~~only to the records governed by (b)~~:

(1) Records in a proceeding under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;

(2) Records in a juvenile court proceeding;

(3) Records in a guardianship or conservatorship proceeding;

(4) Records in a mental health proceeding;

(5) Records in a criminal proceeding;

(6) Records in proceedings to compromise the claims of a minor or a person with a disability;

(7)~~(6)~~ Records in a civil harassment proceeding under Code of Civil Procedure section 527.6;

(8)~~(7)~~ Records in a workplace violence prevention proceeding under Code of Civil Procedure section 527.8;

(9)~~(8)~~ Records in a private postsecondary school violence prevention proceeding under Code of Civil Procedure section 527.85;

(10)~~(9)~~ Records in an elder or dependent adult abuse prevention proceeding under Welfare and Institutions Code section 15657.03; and

~~(10) Records in proceedings to compromise the claims of a minor or a person with a disability.~~

(11) Records in a gun violence prevention proceeding under Penal Code sections 18100–18205.

(d) *** * ***

(e) **Remote ~~electronic~~ access allowed in extraordinary criminal cases**

Notwithstanding (c)(5), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (e)(1), to permit remote ~~electronic~~ access by the public to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would

Rules 1.51 and 2.503 of the California Rules of Court are amended, effective January 1, 2019, to read:

significantly burden the operations of the court. An individualized determination must be made in each case in which such remote ~~electronic~~ access is provided.

(1) In exercising discretion under (e), the judge should consider the relevant factors, such as:

(A) * * *

(B) The benefits to and burdens on the parties in allowing remote ~~electronic~~ access, including possible impacts on jury selection; and

(C) * * *

(2) The court should, to the extent feasible, redact the following information from records to which it allows remote access under (e): driver license numbers; dates of birth; social security numbers; Criminal Identification and Information numbers and National Crime Information Center numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote ~~electronic~~ access. No juror names or other juror identifying information may be provided by remote ~~electronic~~ access. This subdivision does not apply to any document in the original court file; it applies only to documents that are available by remote ~~electronic~~ access.

(3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote ~~electronic~~ access under this rule. Notice to the public may be accomplished by posting notice on the court's ~~Web site~~ website. Any person may file comments with the court for consideration, but no hearing is required.

(4) The court's order permitting remote ~~electronic~~ access must specify which court records will be available by remote ~~electronic~~ access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's ~~Web site~~ website and a copy sent to the Judicial Council.

(f)–(i) *** * ***

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, and indexes) in specified types of cases (notably criminal, juvenile, and family court matters) from public remote ~~electronic~~ access. The committee recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committee also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding judge makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

Subdivisions (f) and (g). These subdivisions limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote ~~electronic~~ access in extraordinary criminal cases to~~:~~ Criminal Justice Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.

DV-630 Order to Register Canadian Domestic Violence Protective/Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Instructions: Use this form to register a civil Canadian domestic violence or family violence protective/restraining order in California. Registration means that the order will be entered into a database that all law enforcement in California can view. Although registration is not required for the order to be enforced, it is helpful to have the order in the database. There is no fee to file this form. ***A certified copy of the order must be submitted with this form. The order must have been issued in English.***

Fill in court name and street address:

Superior Court of California, County of

Fills in case number:

Case Number:

1 Information About the Person Registering the Protective/Restraining Order:

a. My Name: _____

b. ☐ I do not have a lawyer for this case *(fill in items c–f below).*
☐ I have a lawyer for this case *(fill in your lawyer's information below and for items c–e):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Address *(If you want to keep your home address private, give a different mailing address instead.):*
_____
City: _____ State: _____ Zip: _____

d. Telephone *(optional):* _____

e. E-mail Address *(optional):* _____

f. I am *(check one):*
☐ protected by the attached order.
☐ restrained by the attached order.
☐ a legal guardian of a minor protected by the attached order.
☐ other *(specify):* _____

2 Restrained Person

Full Name: _____
Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
Race: _____ Age: _____ Date of Birth: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____
Relationship to protected person: _____

3 To the best of my knowledge, the attached order:

- Is a certified copy of a Canadian protective/restraining order.
- Was issued in English by a civil (noncriminal) court in Canada.
- Was made because of domestic violence or family violence.
- Is currently valid and in effect.
- Has not been changed, canceled, or replaced by another court order.
- Expires on *(date):* _____
  month/day/year

This is a Court Order.

4 I ask that the attached order be registered with this court for entry into the California Law Enforcement and Telecommunications System (CLETS). My request is voluntary. I understand that registration of the order is not necessary for enforcement.

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

(To be completed by court)

The attached Canadian Domestic Violence Protective/Restraining Order is registered and enforceable in California, and can be entered into CLETS, unless it ends or is changed by the court that made it.

Date: _____ _____

Judge (or Judicial Officer)

Court Clerk Must Seal This Form and Attached Foreign Protection Order

This form sets forth the procedure to register a foreign protection order under Family Code section 6404:

1. No fee may be charged for the registration of the foreign protection order.
2. No court hearing is required to register the foreign protection order.
3. The case file containing this form and the attached foreign protection order must be sealed under Family Code section 6404(a).
4. Access to the foreign protection order is allowed only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or on further order of the court.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Register Canadian Domestic Violence Protective/Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

SP18-35

Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS; New Form for Registration of Canadian Domestic Violence Protective Orders; rule amendment to add Gun Violence Restraining Orders (Amend rules 1.51 and 2.503; adopt form DV-630)

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

	Commentator	Position	Comment	Committee Response
1.	California Lawyers Association, by the Executive Committee of the Family Law Section (FLEXCOM)	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes, and believes the proposals appropriately address the stated purposes.	No response required.
2.	Office of the Attorney General California Department of Justice Bureau of Criminal Identification & Investigative Services Branch by Nicole Quinn, Manager	A	• Do the proposals appropriately address the stated purpose? Yes. • Additional comments An additional order type will need to be created in CARPOS for Canadian Domestic Violence Restraining and Protective Orders.	No response required.
3.	Superior Court of Los Angeles (no name provided)	A	• Agree with proposed changes. • Would three months from Judicial Council approval of these proposals until their effective date provide sufficient time for implementation? Staff training and coding can be accomplished in 3 months.	No response required.
4.	Superior Court of Riverside County by Susan D. Ryan, Chief Deputy of Legal Services	A	• Does the proposal appropriately address the stated purpose? Yes • Would the proposal provide cost savings? No. • What would the implementation requirements be for courts? Train staff, revise procedures, create new codes for	No response required.

SP18-35

Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS; New Form for Registration of Canadian Domestic Violence Protective Orders; rule amendment to add Gun Violence Restraining Orders (Amend rules 1.51 and 2.503; adopt form DV-630)

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

	Commentator	Position	Comment	Committee Response
			case management. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? Equally well.	
5.	Superior Court of San Diego County, by Mike Roddy, Executive Officer	A	• Would the proposals provide cost savings? No. • What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Adding new filing to case management system. • Would three months from Judicial Council approval of these proposals until their effective date provide sufficient time for implementation? Yes. • How well would these proposals work in courts of different sizes? It appears that the proposal would work for courts of various sizes.	No response required.

SP18-35

Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS; New Form for Registration of Canadian Domestic Violence Protective Orders; rule amendment to add Gun Violence Restraining Orders (Amend rules 1.51 and 2.503; adopt form DV-630)

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

	Commentator	Position	Comment	Committee Response
6.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), Judicial Council of California	A	Recommended JRS Position: Agree with proposed changes. The JRS notes the following: • The rules and forms appear to be appropriate and necessary to achieve the stated goal. • The three-month time frame is most likely an adequate amount of time to implement the rule.	No response required.

Item number:36

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Protecting Information of People Under 18 Years Old (Adopt Rule of Court 5.382 and 3.1161, and renumber rule 3.1152; adopt forms DV-160; DV-165; DV-170; DV-175; CH-160; CH-165; CH-170; CH-175, and revise forms DV-109 and CH-109.)

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee, jointly

Staff contact (name, phone and e-mail): Anne M Ronan, 415-865-8933, anne.ronan@jud.ca.gov Ccivil and Small Claims); Frances Ho, 415-865-7662 (Family and Juvenile)

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:
Civil and Small Claims Advisory Committee:
Privacy of Minor's Information in Protective Orders Priority 1(b)
Project Summary: Assembly Bill 953 authorizes a minor or a minor's guardian to petition the court to keep all information regarding the minor that was submitted to the court for issuance of a civil harassment or domestic violence protective order in a confidential case file, if the court expressly finds that the minor's right to privacy overcomes the right of public access to the information and no less restrictive means exist to protect the minor's privacy. The confidential information includes the minor's name, address, and the circumstances surrounding the protective order with respect to that minor. Forms to implement these provisions would likely include a petition, information sheet, and possibly an order form.

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.)
Because the new statutory provisions are the same for both domestic violence and civil harassment proceedings, the two advisory committees worked together, via the Joint Protective Order Working Group, to develop parallel rules and forms to implement the new law. The forms are meant to be almost identical (with just a couple of minor differences to refect some differences in the laws). Note that the report and forms are current with copyediting, so there may be minor non-substantive changes in the final report.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

Title
Protective Orders: Protecting Information of People Under 18 Years Old

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 3.1161 and 5.382; renumber rule 3.1152; adopt forms CH-160, CH-165, CH-170, CH-175, DV-160, DV-165, DV-170, and DV-175; revise forms CH-109 and DV-109

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2109

Date of Report
August 13, 2018

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Executive Summary

The Family and Juvenile Law Committee and Civil and Small Claims Advisory Committee jointly recommend adopting rules of court, adopting eight forms (a set of four in the Domestic Violence Prevention series and a set of four in the Civil Harassment Prevention series), and revising two forms, in order to implement the provisions in Assembly Bill 953 (Stats. 2017, ch. 384) that seek to protect information relating to minors in domestic violence and civil harassment restraining orders.

Recommendation

To implement AB 953, the Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council adopt eight new forms (four forms in the Domestic Violence Prevention series and a parallel set of four forms in the Civil Harassment Prevention series), revise two existing forms, and adopt two rules of court.[1] The forms will eliminate the need for parties and the court to create specialized pleadings and orders, and the proposed rules will provide consistency in how these requests are processed within the judicial branch. Therefore, the committees recommend that the council take the following actions, effective January 1, 2019:

1. Adopt rules 3.1161 and 5.382 to provide the new procedures;
2. Renumber rule 3.1152 as rule 3.1160;
3. Adopt *Request to Keep Minor's Information Confidential* (forms CH-160 and DV-160);
4. Adopt *Order on Request to Keep Minor's Information Confidential* (forms CH-165 and DV-165);
5. Adopt *Notice of Order Protecting Information of Minor* (forms CH-170 and DV-170);
6. Adopt *Cover Sheet for Confidential Information* (forms CH-175 and DV-175); and
7. Revise *Notice of Court Hearing* (forms CH-109 and DV-109) to include notice of any confidentiality order.

The text of the amended rules and the new and revised forms are attached at pages 13–58.

Relevant Previous Council Action

AB 953 added section 6301.5 to the Family Code and section 527.6(v) to the Code of Civil Procedure, effective January 1, 2018. Under the new law, a minor or minor's legal guardian can ask the court to make information relating to a minor confidential when issuing a domestic violence or civil harassment restraining order. Adopting these forms and rules are the first action the council will take in implementing this new law. The standard for granting these requests is

[1] Because proposed rules 3.1161 and 5.382 are almost identical in both content and format, differing only in their references to specific statutory provisions and forms, they are, unless otherwise noted, referred to jointly throughout this invitation to comment as the "proposed rules."

In addition to proposing these new rules, the Civil and Small Claims Advisory Committee is also recommending renumbering current rule 3.1152, regarding requests for civil protective orders generally, to rule 3.1160, so that both that rule and the new rules proposed here can be found together in a new article specifically for rules relating to civil protective orders. This will also require renumbering the article directly following this new article.

essentially the same standard for the sealing of records under rule 2.550 of the California Rules of Court.

Analysis/Rationale

Under the new law, a minor or minor's legal guardian can ask the court to make information relating to a minor confidential when issuing a domestic violence or civil harassment restraining order. The standard for granting these requests is essentially the same standard for the sealing of records under rule 2.550 of the California Rules of Court.[2] The advisory committees recognize that implementation of this bill is complicated; however, without adoption of Judicial Council rules and forms, it is unlikely that self-represented litigants will have access to relief under Family Code section 6301.5 and Code of Civil Procedure section 527.6(v).

Rules 3.1161 and 5.382

The proposed rules would provide a consistent procedure for making requests for confidentiality, making orders on a request for confidentiality, and protecting information made confidential by the court.

Making a request for confidentiality. Under the new law, the minor or the minor's legal guardian can request that the information relating to the minor be kept confidential. The law is silent as to how requests are to be made. The proposed rules would:

- Allow a request for confidentiality to be made at any time during the case;[3]
- Require the requester to complete *Request to Keep Minor's Information Confidential* (form CH-160 or form DV-160);[4]
- Authorize the court to rule on the request without any notice being given to the other party, or to both parties if the request is by a minor who is not party to the action;[5]
- Require the court to rule on both the request for confidentiality and the restraining order, if submitted at the same time, on the same day of submission or, if too late in the day, the next court day, consistent with Family Code section 6326 and Code of Civil Procedure section 527.6(e);[6]
- Authorize the court to hold a closed hearing if the request does not include sufficient or specific facts to meet the statutory requirements for a confidentiality order;[7] and
- Allow the requester, in the event that the request for confidentiality is denied, the option of withdrawing the request for restraining orders rather than have the information in

[2] The standard for sealing records under rule 2.550, in turn, is based on the constitutional standard stated in *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court* (1999) 20 Cal.4th 1178.

[3] Proposed rules at (d)(1).

[4] Proposed rules at (d)(2).

[5] Proposed rules at (d)(3)(A).

[6] Proposed rules at (d)(3)(B).

[7] Proposed rules (d)(4).

public court files. (This option is available only if the requester is also the party requesting the restraining order.)[8]

Making orders on a request for confidentiality. Under the new law, the court must expressly make four findings to grant a request for confidentiality. Specifically, the court may order information about the minor, including the minor's name, address, and circumstances surrounding the protective order regarding the minor, be kept confidential if the court expressly finds all of the following:

1. The minor's right to privacy overcomes the right of public access to the information.
2. There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential.
3. The order to keep the information confidential is narrowly tailored.
4. No less restrictive alternative exists to protect the minor's privacy. ***[9]***

In order to comply with the statute, the rules provide that if the court grants an order, it must specifically identify the information regarding the minor that is to be kept confidential***.[10]***

To provide consistency, the proposed rules would also require that when the court

- grants a request to keep the minor's name confidential, it publish only the initials of the minor or both parties or other initials, at the discretion of the court;[11]
- grants a request to keep the minor's name confidential and the minor is not a party to the case, information relating to the minor that would likely reveal the minor's identity is made confidential;[12] and
- rules on a request, the order form is filed in a public file (in a redacted version if it contains information ruled confidential) and the request for confidentiality form is filed in a confidential file.[13]

Protecting information made confidential by the court. The new law is silent on the process for ensuring that information made confidential is protected, leaving two important questions unanswered: (1) who will be responsible for preparing redacted documents and (2) how will documents containing confidential information be submitted to the court? The proposed rules address both these questions.

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[8] Proposed rules at (d)(3)(C).

[9] Fam. Code, § 6301.5(b); Code Civ. Proc., § 527.6(v)(2).

[10] Proposed rules at (e)(2)(B)(ii).

[11] Proposed rules at (e)(2)(B)(1).

[12] Proposed rules at (e)(2)(B)(ii).

[13] Proposed rules at (e)(3)(A) (when order denied) and (f)(2) (for when order granted).

Person responsible for preparing redacted documents. The proposed rules will give the court the discretion to decide who should be ordered to prepare the redacted documents—the judicial officer, the requesting party, or that party's attorney—and how soon the redaction must be competed.[14] The proposed rules will also require the court to consider several factors in making its decision on who should redact, including the complexity of the redaction, whether the person requesting confidentiality is capable of preparing redacted materials, and whether the person requesting confidentiality has immediate access to help from a self-help center or other legal assistance.[15]

Submitting documents containing confidential information to the court. After a request for confidentiality is granted, the proposed rules will require parties to attach a *Cover Sheet for Confidential Information* (form CH-175 or DV-175), anytime documents are submitted for filing.[16] The rules also provide for the court to decide who will be responsible for redaction (using the same factors as for the initial filing). Ultimately, the unredacted document is to be filed in a confidential file and a redacted document, after it has been approved by the court, in a public file.[17] The proposed rules provide that the cover sheet form could also be used in any civil case involving the minor.[18]

New Forms

Request to Keep Minor's Information Confidential (forms CH-160 and DV-160. [19] This form will be completed and submitted by the person asking that information relating to a minor be made confidential.[20] The information that can be made confidential by the court includes the minor's name, address, and other information relating to the minor. There are items for the requesting party to specifically identify the information sought to be kept confidential and to explain the basis for the request. The findings that the court must make are provided at item (6), so the requesting party can focus on those factors when providing reasons for their request for confidentiality from the public. A separate item is included for the requesting party to

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[14] Proposed rules at (f)(1).

[15] Proposed rules at (g).

[16] Proposed rules at (i)(1)(A). The order granting the request for confidentiality will provide notice of this requirement. (See forms CH-165 and DV-165 at item 12.)

[17] Proposed rules at (i)(1(B).

[18] The new law provides that if a request for confidentiality is granted, information regarding the minor shall be maintained in a confidential case file in the underlying procedure "or any other civil procedure." (Fam. Code, § 6301.5(c); Code Civ. Proc., § 527.6(v)(3).)

[19] The two sets of forms are discussed together because they are also nearly identical, differing only when referring to the type of protective order being sought, to specific rules or forms, or to a few minor statutory provisions applicable only to domestic violence protective orders.

[20] The new law does not limit the requests for confidentiality only to minors for whom protection is being sought. A respondent may also file a request, either as a responding minor or on behalf of a child or ward whose information could be included in the petition or the response.

specifically identify any of the information that it also wants to be kept confidential from the restrained person, and the reasons for that request.[21] There is an item that allows the person requesting the restraining order, in the event the request for confidentiality is denied, to withdraw the request for restraining order, rather than have the un-redacted information filed and included in the public court file. No service instructions are included with the request because the court would rule on the request without notice to the other side.[22] The request will be made under penalty of perjury.

Order on Request to Keep Minor's Information Confidential (forms CH-165 and DV-165). This is the order form that the court will complete after it has reviewed form CH-160 or DV-160. If the request for confidentiality is denied, or if the court wants to hold a hearing before making its decision, only page 1 of this form needs to be issued.

If denied, the court will indicate whether the party will be moving forward with the request for restraining order, or whether the party has requested that the request for restraining order be withdrawn. If the request for restraining order is not withdrawn, all documents will be accessible to the public. If the request for restraining order is withdrawn the request for restraining order and accompanying documents will be returned, destroyed, or deleted from electronic files. (Item 3a.)

If the request for confidentiality is granted, there are items for the court to make the statutorily required findings (item 5), specifically identify what information is to be kept confidential (item 8), state whether there is any information that even the restrained person is not to receive (item 9b),[23] and provide notice of the penalties for disclosing confidential information (items 7 and 9). There is also an item for determining who is to redact the confidential information and by what date (item 10), and instructions for service of the relevant forms, including an instruction that the *Notice of Order Protecting Information of Minor* (form CH-170 or DV-170) should be the first page of any document or set of documents that include confidential information (item 13c).

Notice of Order Protecting Information of a Minor (forms CH-170 and DV-170). This one-page form will be used when a confidentiality order has been issued, as a cover sheet for the requesting party to serve with the order and with the documents that contain information the

[21] The new law provides that information may be kept confidential from the restrained person only if the information is not necessary for the respondent to respond to or comply with the restraining order. (Code Civ. Proc. § 527.6(v)(B); Fam. Code § 6301.5(d)(2).

[22] The proposed rules do, however, require that, if the request is granted, or if the request is denied but the party seeking confidentiality is continuing with the request for restraining order anyway, the request ultimately be served on the other party, or both parties if the person making the request is not a party to the action following the issuance of an order on the request. (See proposed rules at (e)(2)(D)); instructions regarding that service are in the proposed order form.)

[23] The new law provides that the otherwise confidential information shall be provided to the respondent "to the extent necessary for the enforcement of the order and to allow the respondent to comply with and respond to the order." (Fam. Code, § 6301.5(d)(2); Code Civ. Proc., § 527.6(v)(4)(B).)

court has ordered be protected (confidential). The cover sheet will provide notice to the party (often the restrained person) being served with unredacted documents that the documents contain confidential information subject to a confidentiality order. The form directs the recipient of the order exactly what information is protected, advises the recipient to use a confidential cover sheet when filing any documents in the case that contain confidential information about the minor, and includes a notice that disclosure or misuse of that confidential information can subject a person to a fine of up to $1,000 or possible sanctions**.**

Cover Sheet for Confidential Information (forms CH-175 and DV-175). This form will be used as a cover sheet for any documents subsequently filed in the protective order proceedings in which a confidentiality order has been made. The party submitting documents for filing will be responsible for attaching this cover sheet to any document that includes confidential information. This form alerts the clerk that the documents contain confidential information, so that the court can file the unredacted documents in the court's confidential files and make a determination as to who would be responsible for redaction of the documents so that redacted versions can be placed in the public files.[24] This cover sheet can also be used in "any other civil proceedings"[25] to alert the court in that proceeding that a confidentiality order exists protecting the minor's information.

Revised forms

Notice of Court Hearing (forms CH-109 and DV-109). This form is being revised to add new item 5 to provide notice when a request to keep a minor's information confidential has been granted.[26] Two new forms are being added to the list of forms to be served in item 6: Notice of Order Protecting Information of Minor (form CH-170 or DV-170) and Order on Request to Keep Minor's Information Confidential (form CH-165 or DV-165).

Policy implications

The recommendation—which requires redaction of documents in procedures that are required to be completed very quickly by the courts—may have some potentially significant operational impacts on the trial courts, as noted by Superior Court of Los Angeles County in its comments. However, as discussed below, the committees have concluded that the recommended procedures are necessary to implement the statute, particularly the section that requires that any confidentiality order be narrowly tailored and the least restrictive alternative available.

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[24] Proposed rules at (i).

[25] See Fam. Code, § 6301.5(c); Code Civ. Proc., § 527.6(v)(3).

[26] This complies with the new law's provision that, if a confidentiality order is issued in civil harassment cases, the notice provided with a temporary restraining order must include notice of the confidentiality order. (Code Civ. Proc., § 527.6(q)(4).) The domestic violence restraining order form is being revised at the same time to ensure that the forms remain alike except in those instances where substantive statutory differences exist.

Comments

The proposal was circulated for comment from April 27, 2018 to June 9, 2018. Comments were received from ten entities.

- Seven commentators agree with the proposal or would agree with the proposal if minor suggested modifications were incorporated. These are California Department of Justice, Bureau of Criminal Identification; Family Violence Appellate Project (FVAP); and Superior Courts of Orange County (as a whole and separately via it Juvenile and Family Law Division), Riverside County, San Bernardino County, and San Diego County.

- The Family Law Section Executive Committee (FLEXCOM) of California Lawyers Association (former State Bar section) agrees with the proposal if asking the court to maintain all filings as confidential is not feasible.

- The Joint Rule Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executive Advisory Committee) agreed with the proposal if modified, including a proposal that a better procedure would be that a minor requesting confidentiality be given a separate case number and file and the entire file be kept confidential.

- Superior Court of Los Angeles County does not agree with the proposal, stating that the proposal goes beyond the statutory changes because, it asserts, the new law does not require redactions.

A comment chart with the full text of all comments received and the committees' responses to each is attached beginning at page 59. The most substantive comments and the responses to the specific request included in the invitation to comment are summarized below.

Redaction of confidential information at start of TRO proceeding. The committees asked for comments on whether, in light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)?

FVAP, Superior Courts of Riverside County and San Bernardino County stated that the rules give sufficient guidance and flexibility.

Superior Court of San Diego commented that onus of redaction should be on parties and "requiring the court to review documents prior to filing may not be feasible given the short time frame in which restraining orders are scheduled and heard." The committees agree that the short time frame is the crux of the problem: having a court rule on the confidentiality request and then order the petitioner—often a self-represented party—to redact the request for restraining order

documents and return them to court, which has to rule on the request within a day, would be problematic. This is why the rules provide the court with options, to either redact the documents itself, to order the party or the party's counsel to do so, or to order some other procedure that will facilitate prompt and accurate preparation of a redacted copy. (Proposed rule (f)(1).)

JRS proposed minor's entire files be kept confidential, to avoid the potential problems of redaction, with everything provided to the restrained person except the minor's name. This proposal was found to be overly broad: automatically keeping all the minor's information confidential does not comply with the statutory requirement to order the least restrictive alternative for confidentiality. Moreover, if some of the information was to be kept confidential from the restrained person, some redaction would still be required. It also does not take into consideration cases in which the minor is the person requesting the restraining order. In those cases, the entire case would be kept confidential, which is not what is envisioned in the statute.

Superior Court of Los Angeles County also finds the procedure problematic, and asserted that the proposal goes beyond what the statute requires by providing for redaction of documents. The Los Angeles court suggests that the rule should instead require that the parties submit two different forms: a request for restraining order with blanks in all the places where the purportedly confidential information would be, and a second document that contains all the information that the party seeks to be kept confidential, along with a request that this second document be kept confidential. The committees considered the concerns of the Los Angeles court, but both unanimously concluded that the recommended rules were the best way to proceed.

The problem with the alternative proposal by the Los Angeles court is that it is likely to result in the same kind of review and action as required under the current rule. The court would have to review the second document and determine which parts, if any, should be kept confidential. In light of the statutory requirements that the confidentiality order must be narrowly tailored and use the least restrictive means, it may well be that a court will need to narrow the amount of information that will be kept confidential, and not grant all requests in their entirety. In such cases, any information in the second document that the court found not appropriate to be kept out of the public record would then have to be added into the request for restraining order in the public file, before the court could rule on the request for restraining order. Who would make this addition to the public record—the party? The clerk? The judicial officer? How would the information be added to the information to be served on the restrained person? In addition, if the court found that some of the information had to be provided to the restrained person to allow him or her to properly respond to the request for restraining order, but that some should be kept confidential from the restrained person, then the second document would have to be redacted before it could be served on the restrained person. The committees concluded that the burdens in this process would be, if anything, greater than in the recommended rules.

Redaction of information from subsequent filings. The proposed rules require that, after a confidentiality order has been issued in a case, parties filing any documents with information made confidential by that order (e.g., a respondent filing an opposition), must file two copies

(unredacted) with a cover sheet (mandatory Judicial Council form) on top noting that the confidentiality order exists. The court is then either to redact one of the documents for placement in the public file, or to order a redaction using the same process as for the initial redactions (Proposed rules at (i)(1).) Several court commenters propose that the party filing the document should be required to submit a redacted version to begin with, rather than have the court prepare or order one be prepared. FVAP, however, agrees with the rule as proposed, noting that determining whether a self-represented litigant—especially one on the opposing side from the party who sought the confidentiality—is capable of properly redacting a document should be done on a case-by-case basis. The committees agree with FVAP and recommend the rule as circulated.

Service of the requests and order for confidentiality. The committees asked for comments on whether the Request to Make Minor's Information Confidential (form CH/DV-160) should be served on all parties after the court rules on the request, and should service of the request be required whether the court grants or denies the request?

FVAP and the Superior Court of San Bernardino responded that form CH/DV-160 should not be served. FVAP argues that the statute does not provide an adversarial process and requires that the restrained person only be provided information that is needed to respond to and comply with the restraining order.

Two commentators expressed concern over the restrained person receiving information that the court has made confidential from the restrained person, highlighting the need for proper redaction procedures.

One commentator argues that the statute does not appear to authorize the court to rule on the form CH/DV-160 without notice and recommends that the court would need to waive notice.

The committees agree that the statute does not contemplate an adversarial process therefore service of form CH/DV-160 should not occur prior to the court's ruling. The committees are concerned, however, with courts' receiving ex parte communication in a pending case. Therefore the proposed rules now make clear that form CH/DV-160 would only be served on the restrained person if there is a pending action in the case and that any information made confidential from the restrained person must be redacted prior to service on the restrained person.

Information needed for court findings. The committees asked for comments on whether the questions posed on form CH/DV-160 (see new item 6), are sufficient to elicit the information necessary for the court to make the findings required by the statute.[27] Four commentators stated that the questions are sufficient and two commentators suggested adding questions to address some of the other findings, specifically, whether less restrictive means exist and whether the order is narrowly tailored.

[27] Fam. Code section 6301.5(b) and Code Civ. Proc. § 527.6(v)(2).

The committees believe that the questions, as circulated, (now provided in CH/DV-165, item 6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing.[28]

The committees also recognize that the court will need information to support a request to keep information confidential from the restrained person that is different than the information needed to make findings confidential from the public. To this end, the committees have added an additional question in item 8 of form CH/DV-160. The committees have also added options for the requestor of the restraining order to withdraw the request for restraining orders in the event any portion of their form CH/DV-160 request is denied, either as to the public (item 7) and as to the restrained person (item 8d).

INFO sheet for parties. FVAP suggested that an information sheet be created to include, "1) an explanation of what the request to maintain confidentiality of minors' information is; 2) the purpose of the request with references to legislative history – specifically to enable minors themselves to make confidential restraining order requests; 3) legal information regarding the implications of disclosing confidential information to persons who are not law enforcement or the respondent; and 4) an explanation of what "redact" means."

The committees agree that a Judicial Council INFO form may be helpful but an INFO form would need to circulate for public comment, and so cannot be added to the proposal at this time. The committees will work on an information sheet in a future cycle. In the meantime, information regarding these forms and the process for these requests will be included in the self-help section of the *www.courts.ca.gov* website by the forms proposed effective date on January 1, 2019.

Notice to law enforcement. The committees also asked for comments on whether the temporary restraining order forms should be revised to include notice to law enforcement when a confidentiality order has been issued. All commentators that had an opinion on this question answered "yes."

The committees agree that this revision should be made and will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to provide notice to relevant law enforcement.

Alternatives considered

As discussed above, the committees considered all the alternatives raised by the commenters, including the proposal to have a separate form on which to file the information the minor or

[28] Form CH/DV-165, at item 3(b)

petitioner wants to keep confidential, but concluded that the originally proposed procedure, as modified here, was the best recommendation they could make.

In addition, the committees considered the following alternatives.

Rules of Court. The committees considered including a provision in the rules that would require the court to redact all documents for self-represented litigants. The committees did not adopt this provision because of the potential backlog for the court, which could cause a delay in documents being filed. Instead, the rule gives the court discretion in making this determination, but requires the court to consider, among other things, a self-represented litigant's ability to draft redacted materials.

Forms. The committees considered not creating a separate notice form (DV-170) because all of the information included on the notice form is in the order form (DV-165). However, the committees recommend adopting form DV-170 because it succinctly provides key information that the person being served with the order for confidentiality (and possibly a temporary restraining order at the same time) will need—specifically, that (1) some information has been made confidential and (2) disclosure or misuse of the confidential information may subject them to a fine of up to $1,000 or possible sanctions.

The committees considered not creating a cover sheet for subsequent filings (form DV-175), but decided that having a cover sheet is necessary to alert the clerk that the document being submitted for filing includes confidential information.

The committees note that the major costs in the new procedures for protecting the confidentiality of minor's information will be the additional filings and judicial officer review that are now required to implement this new law. The committees anticipate that this proposal for new rules and forms will result in costs incurred by courts to incorporate new forms into their paper or electronic process, train court staff, provide assistance to self-represented litigants in self-help centers, and ensure that filed documents are properly redacted. However, the committees concluded that such costs will be offset by the benefit of having a set of forms for parties to use for this new, legislatively mandated procedure.

Attachments and Links

1. Cal. Rules of Court, rules 3.1160, 3.1161, and 5.382, at pages 13–26
2. Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175, at pages 27–58.
3. Comments Chart, at page 59–118.
4. Link A: Assembly Bill 953 (Stats. 2017, ch. 384), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB953

Article 4. Protective Orders

Rule 3.1160 ~~3.1152~~. Requests for protective orders to prevent civil harassment, workplace violence, private postsecondary school violence, and elder or dependent adult abuse

(a)–(e) * * *

Rule 3.1161. Request to make minor's information confidential in civil harassment protective order proceedings

(a) Application of rule

This rule applies to requests and orders made under Code of Civil Procedure section 527.6(v) to keep a minor's information confidential in a civil harassment protective order proceeding.

Wherever used in this rule, "legal guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the guardian, of a minor.

(b) Information that may be made confidential

The information that may be made confidential includes:

(1) The minor's name;

(2) The minor's address;

(3) The circumstances surrounding the protective order with respect to the minor. These include the allegations in the *Request for Civil Harassment Retraining Orders* (form CH-100) that involve conduct directed, in whole or in part, toward the minor; and

(4) Any other information that the minor or legal guardian believes should be confidential.

(c) Requests for confidentiality

(1) *Person making request*

A request for confidentiality may be made by a minor or legal guardian.

(2) *Number of minors*

A request for confidentiality by a legal guardian may be made for more than one minor. "Minor," as used in this rule, refers to all minors for whom a request for confidentiality is made.

(d) Procedures for making request

(1) *Timing of requests*

A request for confidentiality may be made at any time during the case.

(2) *Submission of request*

The person submitting a request must complete and file *Request to Keep Minor's Information Confidential* (form CH-160), a confidential form.

(3) *Ruling on request*

(A) *Ruling on request without notice*

The court must determine whether to grant a request for confidentiality without requiring that any notice of the request be given to the other party, or both parties if the minor is not a party in the proceeding. No adversarial hearing is to be held.

(B) *Request for confidentiality submitted at the same time as a request for restraining orders*

If a request for confidentiality is submitted at the same time as a request for restraining orders, the court must consider both requests consistent with Code of Civil Procedure section 527.6(e) and must consider and rule on the request for confidentiality before the request for restraining order is filed.

Documents submitted with the restraining order request must not be filed until after the court has ruled on the request for confidentiality and must be consistent with (C) below.

(C) *Withdrawal of request for restraining order*

If a request for confidentiality under (B) made by the person asking for the restraining order is denied and the requester seeks to withdraw the request for restraining orders, all of the following apply:

(i) The court must not file the request for restraining order and the accompanying proposed order forms and must return the documents to the requester personally, destroy the documents, or delete the documents from any electronic files;

(ii) The order denying confidentiality must be filed and maintained in a public file; and

(iii) The request for confidentiality must be filed and maintained in a confidential file.

(4) *Need for additional facts*

If the court finds that the request for confidentiality is insufficiently specific to meet the requirements under Code of Civil Procedure section 527.6(v)(2) for granting the request, the court may take testimony from the minor, or legal guardian, the person requesting a protective order, or other competent witness, in a closed hearing in order to determine if there are additional facts that would support granting the request.

(e) Orders on request for confidentiality

(1) *Rulings*

The court may grant the entire request, deny the entire request, or partially grant the request for confidentiality.

(2) *Order granting request for confidentiality*

(A) *Applicability*

An order made under Code of Civil Procedure section 527.6(v) applies in this case and in any other civil case to all registers of actions, indexes, court calendars, 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.

(B) *Minor's name*

If the court grants a request for confidentiality of the minor's name and:

(i) If the minor is a party to the action, the court must use the initials of the minor or other initials, at the discretion of the court. In addition, the

court must use only initials to identify both parties to the action if using the other party's name would likely reveal the identity of the minor.

(ii) If the minor is not a party to the action, the court must not include any information that would likely reveal the identity of the minor, including whether the minor lives with the person making the request for confidentiality.

(C) *Circumstances surrounding protective order (statements related to minor)*

If the court grants a request for confidentiality, the order must specifically identify the information about the minor in *Request for Civil Harassment Restraining Orders* (form CH-100) and any other applicable document that must be kept confidential. Information about the minor ordered confidential by the court must not be made available to the public.

(D) *Service*

The other party, or both parties if the person making the request for confidentiality is not a party to the action, must be served with a copy of the *Request to Keep Minor's Information Confidential* (CH-160), *Order on Request to Keep Minor's Information Confidential* (form CH-165) and *Notice of Order Protecting Information of Minor* (form CH-170), redacted if required under (f)(4).

(3) *Order denying request for confidentiality*

(A) The order denying confidentiality must be filed and maintained in a public file. The request for confidentiality must be filed and maintained in a confidential file.

(B) Notwithstanding denial of a request to keep the minor's address confidential, the address may be confidential under other statutory provisions.

(C) Service

(i) If a request for confidentiality is denied and the request for restraining order has been withdrawn, and if no other action is pending before the court in the case, then the Request to Keep Minor's Information Confidential (CH-160) and Order on Request to Keep Minor's Information Confidential (CH-165) must not be served on the other party, or both parties if the person making the request for confidentiality is not a party to the action.

(ii) If a request for confidentiality is denied and the request for restraining order has not been withdrawn, or if an action between the same parties is pending before the court, then, the Request to Keep Minor's Information Confidential (CH-160) and Order on Request to Keep Minor's Information Confidential (CH-165) must be served on the other party, or both parties if the person making the request for confidentiality is not a party to the action.

(f) Procedures to protect confidential information when requestis granted

(1) If a request for confidentiality is granted in whole or in part, the court, in its discretion, and taking into consideration the factors stated in (g), must ensure that the order granting confidentiality is maintained in the most effective manner by:

(A) The judicial officer redacting all information to be kept confidential from all applicable documents;

(B) Ordering the requesting party or the requesting party's attorney to prepare a redacted copy of all applicable documents and submit all redacted copies to the court for review and filing; or

(C) Ordering any other procedure that facilitates the prompt and accurate preparation of a redacted copy of all applicable documents in compliance with the court's order granting confidentiality, provided the selected procedure is consistent with (g).

(2) The redacted copy or copies must be filed and maintained in a public file, and the unredacted copy or copies must be filed and maintained in a confidential file.

(3) Information that is made confidential from the public and the restrained person must be filed in a confidential file accessible only to the minor or minors who are subjects of the order of confidentiality, or legal guardian who requested confidentiality, law enforcement for enforcement purposes only, and the court.

(4) Any information that is made confidential from the restrained person must be redacted from the copy that will be served on the restrained person.

(g) Factors in Selecting Redaction Procedures

In determining the procedure to follow under (f), the court must consider the following factors:

(1) Whether the requesting party is represented by an attorney;

(2) Whether the requesting party has immediate access to a self-help center or other legal assistance;

(3) Whether the requesting party is capable of preparing redacted materials without assistance;

(4) Whether the redactions to the applicable documents are simple or complex; and

(5) When applicable, whether the selected procedure will ensure that the orders on the request for restraining order and the request for confidentiality are issued and redacted in an expeditious and timely manner.

(h) Sharing of information about a protected minor

(1) *Sharing of information with the respondent*

Information about a protected minor must be shared with the respondent only as provided in Code of Civil Procedure section 527.6(v)(4)(B), limited to information necessary to allow the respondent to respond to the request for the protective order and to comply with the confidentiality order and the protective order.

(2) *Sharing of information with law enforcement*

Information about a protected minor must be shared with law enforcement only as provided in Code of Civil Procedure section 527.6(v)(4)(A).

(i) Protecting information in subsequent filings and other civil cases

(1) *Filings made after an order granting confidentiality*

(A) A party seeking to file a document or form after an order for confidentiality has been made must submit the *Cover Sheet for Confidential Information* (form CH-175) attached to the front of the document to be filed.

(B) Upon receipt of form CH-175 with attached documents, the court must:

(i) Order a procedure for redaction consistent with the procedures stated in (f);

(ii) File the unredacted document in the confidential file pending receipt of the redacted document if the redacted document is not prepared on the same court day; and

(iii) File the redacted document in the public file after it has been reviewed and approved by the court for accuracy.

(2) *Other civil case or cases*

(A) Information subject to an order of confidentiality issued under Code of Civil Procedure section 527.6(v) must be kept confidential in any other civil case or cases.

(B) The minor or person making the request for confidentiality and any person who has been served with a notice of confidentiality must submit a copy of the order of confidentiality (form CH-165) in any other civil case or cases involving the same parties.

Advisory Committee Comment

Subdivisions (a)–(e). The process described in this rule need not be used for minors if the request for confidentiality is merely to keep an address confidential and a petitioning minor has a mailing address which need not be kept private that can be listed on the forms. The restraining order forms do not require the address of a nonpetitioning minor.

This rule and rule 2.551 provide a standard and procedures for courts to follow when a request is made to seal a record. The standard as reflected in Code of Civil Procedure section 527.6(v)(2) is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The standard recognizes the First Amendment right of access to documents used at trial or as a basis of adjudication.

Article 4 5
Receiverships

Rule 3.1175-3.1184 * * *

Rule 5.382. Request to make minor's information confidential in domestic violence protective order proceedings

(a) Application of rule

This rule applies to requests and orders made under Family Code section 6301.5 to keep a minor's information confidential in a domestic violence protective order proceeding.

Wherever used in this rule, "legal guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the guardian, of a minor.

(b) Information that may be made confidential

The information that may be made confidential includes:

(1) The minor's name;

(2) The minor's address;

(3) The circumstances surrounding the protective order with respect to the minor. These include the allegations in the *Request for Domestic Violence Retraining Order* (form DV-100) that involve conduct directed, in whole or in part, toward the minor; and

(4) Any other information that the minor or legal guardian believes should be confidential.

(c) Requests for confidentiality

(1) *Person making request*

A request for confidentiality may be made by a minor or legal guardian.

(2) *Number of minors*

A request for confidentiality by a legal guardian may be made for more than one minor. "Minor," as used in this rule, refers to all minors for whom a request for confidentiality is made.

(d) Procedures for making request

(1) *Timing of requests*

A request for confidentiality may be made at any time during the case.

(2) *Submission of request*

The person submitting a request must complete and file *Request to Keep Minor's Information Confidential* (form DV-160) a confidential form.

(3) *Ruling on request*

(A) *Ruling on request without notice*

The court must determine whether to grant a request for confidentiality without requiring that any notice of the request be given to the other party, or both parties if the minor is not a party in the proceeding. No adversarial hearing is to be held.

(B) *Request for confidentiality submitted at the same time as a request for restraining orders*

If a request for confidentiality is submitted at the same time as a request for restraining orders, the court must consider both requests consistent with Family Code section 6326, and must consider and rule on the request for confidentiality before the request for restraining order is filed.

Documents submitted with the restraining order request must not be filed until after the court has ruled on the request for confidentiality and must be consistent with (C) below.

(C) *Withdrawal of request*

If a request for confidentiality under (B) made by the person asking for the restraining order is denied and the requester seeks to withdraw the request for restraining orders, all of the following apply:

(i) The court must not file the request for restraining order and the accompanying proposed order forms and must return the documents to the requester personally, destroy the documents, or delete the documents from any electronic files;

(ii) The order denying confidentiality must be filed and maintained in a public file; and

(iii) The request for confidentiality must be filed and maintained in a confidential file.

(4) *Need for additional facts*

If the court finds that the request for confidentiality is insufficiently specific to meet the requirements under Family Code section 6301.5(b) for granting the request, the court may take testimony from the minor, or legal guardian, the person requesting a protective order, or other competent witness, in a closed hearing in order to determine if there are additional facts that would support granting the request.

(e) Orders on request for confidentiality

(1) *Rulings*

The court may grant the entire request, deny the entire request, or partially grant the request for confidentiality.

(2) *Order granting request for confidentiality*

(A) *Applicability*

An order made under Family Code section 6301.5 applies in this case and in any other civil case to all registers of actions, indexes, court calendars, 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.

(B) *Minor's name*

If the court grants a request for confidentiality of the minor's name and:

(i) If the minor is a party to the action, the court must use the initials of the minor, or other initials at the discretion of the court. In addition, the court must use only initials to identify both parties to the action if using the other party's name would likely reveal the identity of the minor.

(ii) If the minor is not a party to the action, the court must not include any information that would likely reveal the identity of the minor, including whether the minor lives with the person making the request for confidentiality.

(C) *Circumstances surrounding protective order (statements related to minor)*

If the court grants a request for confidentiality, the order must specifically identify the information about the minor in *Request for Domestic Violence Restraining Order* (form DV-100) and any other applicable document that must be kept confidential. Information about the minor ordered confidential by the court must not be made available to the public.

(D) *Service*

The other party, or both parties if the person making the request for confidentiality is not a party to the action, must be served with a copy of the

Request for Domestic Violence Restraining Order (form DV-160), Order on Request to Keep Minor's Information Confidential (form DV-165) and *Notice of Order Protecting Information of Minor* (form DV-170), redacted as if required under (f)(4).

The protected person and the person requesting confidentiality (if not the protected person) must be provided up to three copies of redacted and unredacted copies of any request or order form.

(3) *Order denying request for confidentiality*

(A) The order denying confidentiality must be filed and maintained in a public file. The request for confidentiality must be filed and maintained in a confidential file.

(B) Notwithstanding denial of a request to keep the minor's address confidential, the address may be confidential under other statutory provisions

(C) *Service*

(i) If a request for confidentiality is denied and the request for restraining order has been withdrawn, and if no other action is pending before the court in the case, then the Request to Keep Minor's Information Confidential (DV-160) and Order on Request to Keep Minor's Information Confidential (DV-165) must not be served on the other party, or both parties if the person making the request for confidentiality is not a party to the action.

(ii) If a request for confidentiality is denied and the request for restraining order has not been withdrawn, or if an action between the same parties is pending before the court, then the *Request to Keep Minor's Information Confidential* (DV-160) and *Order on Request to Keep Minor's Information Confidential* (DV-165) must be served on the other party, or both parties if the person making the request for confidentiality is not a party to the action.

(f) Procedures to protect confidential information when order is granted

(1) If a request for confidentiality is granted in whole or in part, the court, in its discretion, and taking into consideration the factors stated in (g), must ensure that the order granting confidentiality is maintained in the most effective manner by:

(A) The judicial officer redacting all information to be kept confidential from all applicable documents;

(B) Ordering the requesting party or the requesting party's attorney to prepare a redacted copy of all applicable documents and submit all redacted copies to the court for review and filing; or

(C) Ordering any other procedure that facilitates the prompt and accurate preparation of a redacted copy of all applicable documents in compliance with the court's order granting confidentiality, provided the selected procedure is consistent with (g).

(2) The redacted copy or copies must be filed and maintained in a public file, and the unredacted copy or copies must be filed and maintained in a confidential file.

(3) Information that is made confidential from the public and the restrained person must be filed in a confidential file accessible only to the minor or minors who are subjects of the order of confidentiality, or legal guardian who requested confidentiality, law enforcement for enforcement purposes only, and the court.

(4) Any information that is made confidential from the restrained person must be redacted from the copy that will be served on the restrained person.

(g) Factors in Selecting Redaction Procedures

In determining the procedures to follow under (f), the court must consider the following factors:

(1) Whether the requesting party is represented by an attorney;

(2) Whether the requesting party has immediate access to a self-help center or other legal assistance;

(3) Whether the requesting party is capable of preparing redacted materials without assistance;

(4) Whether the redactions to the applicable documents are simple or complex; and

(5) When applicable, whether the selected procedure will ensure that the orders on the request for restraining order and the request for confidentiality are entered in an expeditious and timely manner.

(h) Sharing of information about a protected minor

(1) *Sharing of information with the respondent*

Information about a protected minor must be shared with the respondent only as provided in Family Code section 6301.5(d)(2), limited to information necessary to allow the respondent to respond to the request for the protective order and to comply with the confidentiality order and the protective order.

(2) *Sharing of information with law enforcement*

Information about a protected minor must be shared with law enforcement only as provided in Family Code section 6301.5(d)(1).

(i) Protecting information in subsequent filings and other civil cases

(1) *Filings made after an order granting confidentiality*

(A) A party seeking to file a document or form after an order for confidentiality has been made must submit the *Cover Sheet for Confidential Information* (form DV-175) attached to the front of the document to be filed.

(B) Upon receipt of form DV-175 with attached documents, the court must:

(i) Order a procedure for redaction consistent with the procedures stated in (f);

(ii) File the unredacted document in the confidential file pending receipt of the redacted document if the redacted document is not prepared on the same court day; and

(iii) File the redacted document in the public file after it has been reviewed and approved by the court for accuracy.

(2) *Other civil case or cases*

(A) Information subject to an order of confidentiality issued under Family Code section 6301.5 must be kept confidential in any other civil case or cases.

(B) The minor or person making the request for confidentiality and any person who has been served with a notice of confidentiality must submit a copy of the order of confidentiality (form DV-165) in any other civil case or cases involving the same parties.

Advisory Committee Comment

Subdivisions (a), (b), (d), and (e). The process described in this rule need not be used if the request for confidentiality is merely to keep an address confidential and the minor has a mailing address which does not need to be kept private that can be listed on the forms, or if the minor's address can be made confidential under Family Code section 3429. In addition, the address need not be listed on the protective order for enforcement purposes under Family Code section 6225. The restraining order forms do not require the address of the nonpetitioning minor.

This rule and rule 2.551 provide a standard and procedures for courts to follow when a request is made to seal a record. The standard as reflected in Family Code section 6301.5 is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The standard recognizes the First Amendment right of access to documents used at trial or as a basis of adjudication.

CH-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

08-09-18

Not approved by the Judicial Council

1 Person Seeking Protection

a. Your Full Name:

_____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Person From Whom Protection Is Sought

Full Name: _____

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

4 Temporary Restraining Orders *(Any orders granted are on form CH-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are *(check only one box below):*

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons for denial of some or all of those personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are:

(1) ☐ The facts as stated in form CH-100 do not sufficiently show acts of violence, threats of violence, or a course of conduct that seriously alarmed, annoyed, or harassed the person in (1) and caused substantial emotional distress.

(2) ☐ Other *(specify):* ☐ As set forth on Attachment 4b.

(5) Confidential Information Regarding Minor

a. ☐ A *Request to Keep Minor's Information Confidential* (form CH-160) was made and **GRANTED** (*see form CH-165,* Order on Request to Keep Minor's Information Confidential *served with this form.)*

b. **If the request was granted, the information described in item (8) on the order (form CH-165) must be kept CONFIDENTIAL. The disclosure or misuse of the information is punishable as contempt of court, with a fine of up to $1000 or possible sanctions.**

(6) Service of Documents for the Person in (1)

At least ☐ five ☐ _____ days before the hearing, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court's file-stamped copy of this form CH-109 to the person in (2) along with a copy of all the forms indicated below:

a. CH-100, *Request for Civil Harassment Restraining Orders* (file-stamped)

b. ☐ CH-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. CH-120, *Response to Request for Civil Harassment Restraining Orders* (blank form)

d. CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*

e. CH-250, *Proof of Service of Response by Mail* (blank form)

f. ☐ CH-170, *Notice of Order Protecting Information of Minor* and CH-165*, Order on Request to Keep Minor's Information Confidential* (file-stamped) **IF GRANTED**

g. ☐ Other *(specify):* _____

Date: _____ ▶ _____

Judicial Officer

Case Number:

To the Person in ❶ :

- The court cannot make the restraining orders after the court hearing unless the person in ❷ has been personally given (served) a copy of your request and any temporary orders. To show that the person in ❷ has been served, the person who served the forms must fill out a proof of service form. Form CH-200, *Proof of Personal Service,* may be used.
- For information about service, read form CH-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the person in ❷ in time, you may ask for more time to serve the documents. Use form CH-115, *Request to Continue Court Hearing and to Reissue Temporary Restraining Order*.

To the Person in ❷ :

- If you want to respond to the request for orders in writing, file form CH-120, *Response to Request for Civil Harassment Restraining Orders,* and have someone age 18 or older—**not you or anyone to be protected—**mail it to the person in ❶ .
- The person who mailed the form must fill out a proof of service form. Form CH-250, *Proof of Service of Response by Mail,* may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make restraining orders against you that could last up to five years and may order you to turn in to law enforcement, or sell to or store with a licensed gun dealer, any firearms that you own or possess.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

CH-160 Request to Keep Minor's Information Confidential

CONFIDENTIAL

Clerk stamps date here when form is filed.

DRAFT

08-09-18

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

- **When do I use this form?**
  Complete this form if you want the court to keep information about a minor in a domestic violence restraining order proceeding confidential and not available to the public or the restrained person. If you only want to keep your home address confidential, you may use a mailing address on your other forms rather than using this form.

- **What if there is information I don't want the restrained person to have?**
  You can make this request at item (8) if you want to ask the court to keep information confidential from the restrained person. If the court grants your request to keep certain information confidential from the restrained person, the information will have to be blacked out from all forms before the restrained person gets a copy. But be aware that if the court denies your request, the information may be provided to the restrained person.

- **Who will see this form?**
  The public will NOT have access to this form.
  The restrained person will have access to the entire form unless the court grants the request made in item (8) below.

(1) Parties in This Case

a. Person who requested restraining order (form CH-100, item (1)):
   Full Name: _____

b. Person from whom protection is sought (form CH-100, item (2)):
   Full Name: _____

(2) Person Making Request for Confidentiality

a. Full Name: _____

b. I am:

(1) ☐ The minor requesting confidentiality.

(2) ☐ The ☐ parent ☐ legal guardian of the minor or minors listed here.

List all the minors that you are making the request for:

Name: _____

Name: _____

Name: _____

Name: _____

☐ *Check here if there are additional minors. Attach a sheet of paper and write "Attachment 2b(2)—Additional Minors" for a title.*

This is not a Court Order.

Case Number:

3 Contact Information

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

b. Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail):*
Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

4 ☐ Requests for More Than One Minor *(ONLY for parents or legal guardians)*

I am making this request for two or more minors.

a. ☐ The information I want confidential (as checked in item 5) is the SAME for all minors.

b. ☐ The information I want confidential (as checked in item 5) is NOT the same for all minors.

If you checked b, make sure you list all the information you want confidential for each minor in 5. If you need more space in 5, attach a separate piece of paper.

5 Information to Be Kept Confidential from the Public

I want the information checked below to be made confidential and NOT available to the public.

Check ALL that apply:

a. ☐ **Minor's name**

(Note: If your request is granted, the public will not have access to your name in this case, but the restrained person and law enforcement must be given this information.)

b. ☐ **Minor's address**

The address I want kept confidential is: _____

(Note: You do NOT have to make this request if you use a mailing address that does not need to be kept confidential. Use that mailing address on all forms in this case and any other civil case.)

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 5b" for the title.*

This is not a Court Order.

c. ☐ **Information relating to the minor**

(Note: If information relating to the minor is made confidential by the court, the public will not have access to this information but the restrained person must be given the information that is necessary to comply with the restraining order and to respond to the restraining order request.)

Describe all information in the documents that will be filed that you want kept confidential.

You may either *(check one):*

(1) ☐ Attach a copy of form CH-100 or other document that you are filing. Circle all the information you want kept confidential.

(2) ☐ List the information below, identifying the location of the statements in form CH-100 or other document that you are filing.

Location of Information *(for example, form #, page #, paragraph #, line #, attachment #, or exhibit #)*	**Information to Be Redacted** *(not viewable by the public)*

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 5c(2)" for a title.*

(a) _____ _____

(b) _____ _____

(c) _____ _____

(d) _____ _____

This is not a Court Order.

6 Reasons for Request

To approve your request, the court must expressly find all of the following:

- The minor's right to privacy overcomes the right of the public access to the information;
- There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential;
- The order to keep the information confidential is narrowly tailored; and
- No less restrictive means exist to protect the minor's privacy.

Use these four requirements to help you answer the questions below.

a. Why should the information about the minor provided in item 5 be kept private or confidential?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 6a" for a title.*

b. What do you think would happen if the information was NOT made private or confidential?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 6b" for a title.*

This is not a Court Order.

Case Number:

7 If any portion of the request for confidentiality from the public (item 5) is denied, I want to *(check one):*

a. ☐ **Cancel my request for restraining order**
I ask the court NOT to make a decision on my request for a Civil Harassment Restraining Order (form CH-100). I understand that cancelling my request means that I will not receive a restraining order at this time. *(Note: you may file a request on the same or different facts at a later date.)*

b. ☐ **Move forward with my request for restraining order**
I ask the court to make a decision on my request for restraining order (form CH-100). *(Note: Choosing this option means that the information in your request for restraining order (form CH-100) and other related documents and forms will be available to the public and must be seen by the restrained person unless you make a request in item 8 and the court approves the request.)*

8 ☐ Information to Be Kept Confidential From the Restrained Person

(Note: The restrained person must be given information necessary to comply with the restraining order and to respond to the restraining order request.)

I do not want the restrained person to have access to some of the information checked in item 5.

a. What information do you want to be confidential and not given to the restrained person?

(1) ☐ Minor's name

(2) ☐ Minor's address

(3) ☐ Other information relating to the minor from item 5 *(specify):*
☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8a(3)" for a title.*

b. Why should the information listed in (a) be kept confidential and not given to the restrained person?
☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8b" for a title.*

c. What do you think would happen if the information listed in (a) is given to the restrained person?
☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8c" for a title.*

This is not a Court Order.

d. If any portion of the request for confidentiality from the restrained person (item (8)) is denied, I want to:

(1) ☐ **Cancel my request for restraining order**
I ask the court NOT to make a decision on my request for a *Civil Harassment Restraining Order* (form CH-100). I understand that cancelling my request means that I will not receive a restraining order at this time. *(Note: you may file a request on the same or different facts at a later date.)*

(2) ☐ **Move forward with my request for restraining order**
I ask the court to make a decision on my request for restraining order (form CH-100). *Note: Choosing this option means that all of the information in your request for restraining order (form CH-100) must be seen by the restrained person.*

(9) Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____
Type or print your name *Signature of person making this request*

This is not a Court Order.

CH-165 Order on Request to Keep Minor's Information Confidential

Clerk stamps date here when form is filed.

DRAFT

08-09-2018

Not approved by the Judicial Council

☐ **CONFIDENTIAL** ☐ **PUBLIC VERSION (REDACTED)**

Person in (2) must complete items (1) and (2) only.

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) Parties in This Case

a. Person who requested restraining order (form CH-100, item (1)):
Full name: _____

b. Person from whom protection is sought (form CH-100, item (2)):
Full name: _____

(2) Person Making Request for Confidentiality

Full name: _____

Court will complete item (3) if request is denied or items (4)–(13) if request is granted or partially granted.

Court's Decision

The court has reviewed the request for confidentiality and makes the following decision:

(3) ☐ Denied in Whole or in Part or More Information Needed

a. ☐ **DENIED.** The request to keep information of a minor or minors confidential is denied.
   (1) ☐ **The court will not make a decision on the Request for a Civil Harassment Restraining Order.** The request for restraining order and proposed order forms must be returned to the requestor personally, destroyed, or deleted from electronic files and not filed with the court unless the person requesting the restraining order agrees to file them without any changes.
   (2) ☐ **The Petitioner's Request to move forward with Request for Restraining Order is granted.** The request for restraining order and any accompanying orders will be filed.

b. ☐ **More information is needed for court decision.** You must go to court on the date and time below to provide more information on why you need a request for confidentiality.

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____

c. If (3) is checked, only this page of this order form will be issued. All other pages may be discarded.

Date: _____

_____
Judge (or Judicial Officer)

Instructions to Clerk

If item (3) is checked, file page 1 in a public file and discard pages 2–5.
File the request for confidentiality (form CH-160) in a confidential file.

This is a Court Order.

Case Number:

Court will complete the rest of this form if the request is partially or fully granted

4 ☐ GRANTED

a. ☐ **Granted in full.** The request to keep the information of a minor or minors confidential is granted in full. Details of the order are stated below in items 5–12 .

b. ☐ **Partially granted**. The request to keep the information of a minor or minors confidential is granted only in part. Details of the order are stated below in items 5–12 .

5 Findings

☐ The court finds all of the following *(all of these findings are required if granting in full or in part)*:

a. The right to privacy of the minors listed in item 6 overcomes the public's right of access to the information;

b. There is a substantial probability that the interests of the minors listed in item 6 will be prejudiced if the information is not kept confidential;

c. The order is narrowly tailored; and

d. No less restrictive means exist to protect the privacy of the minors in item 6.

6 ☐ Minors Subject to This Order

This order protects the information listed in item 8 for the following minors:

a. Name: _____

b. Name: _____

c. Name: _____

d. Name: _____

☐ *Check here if there are additional minors. Attach a sheet of paper and write "Attachment 2b(2)—Additional Minors" for a title.*

References in this order to "the minor" refer to all minors listed here.

7 WARNING: If the information listed in item 8 is misused or disclosed to anyone other than law enforcement, you may be fined up to $1,000 for contempt of court or face other sanctions.

8 Information to Be Kept Confidential From Public

The following information must be kept confidential and not viewable by the public. *(Check all that apply.)*

a. ☐ **Name of minor**

True name of minor in item 6 *(to be kept confidential)*	**Initials viewable by the public** *(to be used in redacted version)*

This is a Court Order.

b. ☐ **Address of minor**

The following addresses of the minors listed in item (6) must be redacted and must not be viewable to the public.

c. ☐ **Information relating to minor** *(check one):*

(1) ☐ The information CIRCLED in the attached copy of Form CH-100 or other document or form is made confidential by this order.

(2) ☐ The information below is made confidential by this order:

Location of Information *(for example, form #, page #, paragraph #, line #, attachment #, or exhibit #)*	**Information to Be Redacted** *(not viewable by the public)*
(a)	
(b)	
(c)	
(d)	

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8c(2)" for a title.*

d. ☐ **Other:**

This is a Court Order.

Case Number:

9 Information to Be Kept Confidential From the Restrained Person

The restrained person *(full name)* _____ will have access to the following information checked in item 8 to comply with the protective order and prepare a response:

a. ☐ All the information, unredacted.

b. ☐ All the information except for the following:

☐ *Check here if additional space is needed and include the information on a separate piece of paper, write "Attachment 9" on top, and attach to this form.*

_____

_____

_____

WARNING: If the information listed in item 8 is misused or disclosed to anyone other than law enforcement, you may be fined up to $1,000 for contempt of court or face other sanctions.

10 Responsibility for Redacting All Forms and Documents

a. All forms and documents submitted with the request for confidentiality **must be redacted and filed with the Court** no later than *(number of court days or date)* _____ , by the:

(1) ☐ Court

(2) ☐ Person making the request

(3) ☐ Other: _____

b. The redacted documents must be filed in a public file, and the unredacted documents must be filed in a confidential file.

11 Court Records and Hearings

The information listed in item 8 must NOT be disclosed by the court in any:

a. Registers of actions, indexes, court calendars, court transcripts, or minute orders in this case.

b. Future court hearings, including any documents introduced during a hearing in this case or any civil case in the State of California.

12 To All Parties

a. The information made confidential by this order must NOT be made public in this case or any other civil case.

b. Any documents filed in this case or any other civil case that includes information listed in item 8 must be filed with form CH-175, *Cover Sheet for Confidential Information*, attached to the front.

This is a Court Order.

(13) To the Person Making the Request for Confidentiality:

You must do the following:

a. ☐ Have a copy of each form listed in item (c) below **personally served** on (given to) the restrained person.

(*See form CH-200-INFO to find out how to meet this requirement. Personal service is required when the protected person is making this request and when CH-100, CH-109 and CH-110 have NOT been served on the restrained person.)*

b. ☐ Have a copy of each form listed in item (c) mailed to the:

(1) ☐ Restrained person

(2) ☐ Protected person

(3) ☐ Other: _____

(See form CH-250 to find out how to meet this requirement.)

c. Forms to serve:

(1) Form CH-170, *Notice of Order Protecting Information of Minor*
(Form CH-170 should be the first page with all others stapled behind.)

(2) ☐ Form CH-100, *Request for Civil Harassment Restraining Order*

(3) ☐ Form CH-109, *Notice of Court Hearing*

(4) ☐ Form CH-110, *Temporary Restraining Order*

(5) ☐ Form CH-160, *Request to Keep Minor's Information Confidential*
☐ Unredacted ☐ Redacted (if item 9b on CH-165 is checked)

(6) Form CH-165, *Order on Request to Keep Minor's Information Confidential*
☐ Unredacted ☐ Redacted (if item 9b on CH-165 is checked)

(7) Form CH-175, *Cover Sheet for Confidential Information* (leave blank)

(8) ☐ Other: _____

d. In any OTHER civil cases involving the minor, provide a copy of this order to the court in the other case.

Date: _____

_____
Judge (or Judicial Officer)

Instructions to Clerk

The original of all unredacted documents containing the information checked in item (8) must be kept in a confidential file and the information provided in item (8) must not appear in:

- any register of action;
- any calendar;
- any index;
- any transcript; or
- any minute order.

Any information listed in item 9b must be sealed and filed in a confidential file.

This is a Court Order.

CH-170 Notice of Order Protecting Information of Minor

Clerk stamps date here when form is filed.

DRAFT

08-09-2018

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in the case number and ticket number (if you have it):

Case Number:

1 Confidential Information

The court has made some information in this case confidential. Details of the Order for Confidentiality are in Form CH-165, *Order on Request to Keep Minor's Information Confidential*. Confidential information may be given ONLY to law enforcement to enforce the restraining order (attached form CH-110).

2 Documents Attached to This Notice

The following documents contain confidential information:

a. ☐ Form CH-100, *Request for Civil Harassment Restraining Order*
b. ☐ Form CH-109, *Notice of Court Hearing*
c. ☐ Form CH-110, *Temporary Restraining Order*
d. ☐ Form CH-130, *Restraining Order After Hearing*
e. ☐ Form CH-160, *Request to Keep Minor's Information Confidential*
f. ☐ Form CH-165, *Order on Request to Keep Minor's Information Confidential*
g. ☐ Form CH-175, *Cover Sheet for Confidential Information* (leave blank)
h. ☐ Other: _____

3 Filing Documents

If you file any document that contains any confidential information in this case or other civil case **you MUST also use form CH-175 as a cover sheet**. See form CH-165, item (8) for all information made confidential by the court.

4 NOTICE TO RECIPIENT: If you misuse or disclose the confidential information in this case to anyone other than law enforcement, you could be fined up to $1,000 for contempt of court or face other sanctions.

Instructions to Clerk

When providing copies of unredacted filed documents to any party, you must attach this cover sheet on top of the document or set of documents. Complete item (2) to indicate the forms that are attached.

CH-175 Cover Sheet for Confidential Information

CONFIDENTIAL

Clerk stamps date here when form is filed.

DRAFT

08-09-2018

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions to Parties

- When to use this cover sheet:
  - ☑ Form CH-165 has been issued by the court
    AND
  - ☑ You want to file a document or form that includes confidential information *(see form CH-165, item (8)).*
- How to use this cover sheet:
  - Make **two copies** of the documents you want to file.
  - Complete this form, place it on top of the documents (both copies) you want to file, and file them with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in the case number:

Case Number:

Instructions to Clerk

1. The Court must review and approve a redacted version of documents attached to this cover sheet **before filing**.
2. Once approved by the Court, file the redacted version in a public file.
3. File the unredacted version and this cover sheet in a confidential file.

(1) Parties in This Case

a. Person who filed the case:
(Name): _____

b. Other party or parties:
(Name): _____

(2) Information About the Order for Confidentiality

a. The order was made in *(check one):*
(1) ☐ This case.
(2) ☐ Another civil case:
(a) Case number: _____
(b) County it was filed in: _____
Attach a copy of the order (form CH-165) if you have one.)

b. Minor protected by confidentiality order:
(1) Name: _____
(2) Name: _____
☐ *Check here if you need more space. Include the information on a separate piece of paper, write "Attachment 2" on the top, and attach it to this form.*

(3) I have attached two copies of the following documents:

☐ Form CH-_____

☐ Other form or document *(describe):* _____

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

DV-160 Request to Keep Minor's Information Confidential

CONFIDENTIAL

Clerk stamps date here when form is filed.

DRAFT

07-31-2018

Not approved by the Judicial Council

- **When do I use this form?**
  Complete this form if you want the court to keep information about a minor in a domestic violence restraining order proceeding confidential and not available to the public or the restrained person. If you only want to keep your home address confidential, you may use a mailing address on your other forms rather than using this form.

- **What if there is information I don't want the restrained person to have?**
  You can make this request at item (8) if you want to ask the court to keep information confidential from the restrained person. If the court grants your request to keep certain information confidential from the restrained person, the information will have to be blacked out from all forms before the restrained person gets a copy. But be aware that if the court denies your request, the information may be provided to the restrained person.

- **Who will see this form?**
  The public will NOT have access to this form.
  The restrained person will have access to the entire form unless the court grants item (8) on this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Parties in This Case

a. Person who requested restraining order (form DV-100, item (1)):

Full Name: _____

b. Person from whom protection is sought (form DV-100, item (2)):

Full Name: _____

(2) Person Making Request for Confidentiality

a. Full Name: _____

b. I am:

(1) ☐ The minor requesting confidentiality.

(2) ☐ The ☐ parent ☐ legal guardian of the minor or minors listed here.

List all the minors that you are making the request for:

Name: _____

Name: _____

Name: _____

Name: _____

☐ *Check here if there are additional minors. Attach a sheet of paper and write "Attachment 2b(2)—Additional Minors" for a title.*

This is not a Court Order.

Case Number:

3 Contact Information

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

b. Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. Your do not have to give telephone, fax, or e-mail):*
Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

4 ☐ Requests for More Than One Minor *(ONLY for parents or legal guardians)*

I am making this request for two or more minors.

a. ☐ The information I want confidential (as checked in item 5) is the SAME for all minors.

b. ☐ The information I want confidential (as checked in item 5) is NOT the same for all minors.

If you checked b, make sure you list all the information you want confidential for each minor in 5. If you need more space in 5, attach a separate piece of paper.

5 Information to Be Kept Confidential From the Public

I want the information checked below to be made confidential and NOT available to the public.

Check ALL that apply:

a. ☐ **Minor's name**

(Note: If your request is granted, the public will not have access to your name in this case, but the restrained person and law enforcement must be given this information.)

b. ☐ **Minor's address**

The address I want kept confidential is: _____

(Note: You do NOT have to make this request if you use a mailing address that does not need to be kept confidential. Use that mailing address on all forms in this case and any other civil case.)

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 5b" for the title.*

This is not a Court Order.

c. ☐ **Information relating to the minor**

(Note: If information relating to the minor is made confidential by the court, the public will not have access to this information but the restrained person must be given the information that is necessary to comply with the restraining order and to respond to the restraining order request.)

Describe all information in the documents that will be filed that you want kept confidential.

You may either *(check one):*

(1) ☐ Attach a copy of form DV-100 or other document that you are filing. Circle all the information you want kept confidential.

(2) ☐ List the information below, identifying the location of the statements in Form DV-100 or other document that you are filing.

Location of Information *(for example, Form #, page #, paragraph #, line #, attachment #, or exhibit #)*	**Information to Be Redacted** *(not viewable by the public)*
(a)	
(b)	
(c)	
(d)	

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 5c(2)" for a title.*

This is not a Court Order.

Case Number:

6 Reasons for Request

To approve your request in 5, the court must expressly find all of the following:

- The minor's right to privacy overcomes the public's right to access the information;
- There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential;
- The order to keep the information confidential is narrowly tailored; and
- No less restrictive means exist to protect the minor's privacy.

Use these four requirements to help you answer the questions below.

a. Why should the information about the minor provided in item 5 be kept private or confidential from the public?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 6a" for a title.*

b. What do you think would happen if the information was NOT made private or confidential?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 6b" for a title.*

This is not a Court Order.

Case Number:

7 If any portion of the request for confidentiality from the public (item 5) is denied, I want to *(check one):*

a. ☐ **Cancel my request for restraining order**
I ask the court NOT to make a decision on my request for a Civil Harassment Restraining Order (form CH-100). I understand that cancelling my request means that I will not receive a restraining order at this time. *(Note: you may file a request on the same or different facts at a later date.)*

b. ☐ **Move forward with my request for restraining order**
I ask the court to make a decision on my request for restraining order (Form DV-100). *(Note: Choosing this option means that all of the information in your request for restraining order (Form DV-100) and other related documents and forms will be available to the public and must be seen by the restrained person.*

8 ☐ Information to Be Kept Confidential From the Restrained Person

(Note: The restrained person must be given information necessary to comply with the restraining order and to respond to the restraining order request.)

I do not want the restrained person to have access to some of the information checked in item 5.

a. What information do you want to be confidential and not given to the restrained person?

(1) ☐ Minor's name

(2) ☐ Minor's address

(3) ☐ Other information relating to the minor from item 5 *(specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8a(3)" for a title.*

b. Why should the information listed in (a) be kept confidential and not given to the restrained person?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8b" for a title.*

c. What do you think would happen if the information listed in (a) is given to the restrained person?

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8c" for a title.*

This is not a Court Order.

d. ☐ If any portion of the request for confidentiality from the restrained person (item ⑧) is denied, I want to:

(1) ☐ **Cancel my request for restraining order**
I ask the court NOT to make a decision on my request for a *Request for Domestic Violence Restraining Order* (Form DV-100). I understand that cancelling my request means that I will not receive a restraining order at this time. *(Note: you may file a request on the same or different facts at a later date.)*

(2) ☐ **Move forward with my request for restraining order**
I ask the court to make a decision on my request for restraining order (Form DV-100). *Note: Choosing this option means that all of the information in your request for restraining order (Form DV-100) must be seen by the restrained person.*

⑨ Number of pages attached to this form, if any: _____

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

Date: _____

_____ ▶ _____
Type or print your name *Signature of person making this request*

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

This is not a Court Order.

DV-165 Order on Request to Keep Minor's Information Confidential

Clerk stamps date here when form is filed.

DRAFT

8-1-2018

Not approved by the Judicial Council

☐ **CONFIDENTIAL** ☐ **PUBLIC VERSION (REDACTED)**

Person in (2) must complete items (1) and (2) only.

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) Parties in This Case

a. Person who requested restraining order (form DV-100, item (1)):
Full name: _____

b. Person from whom protection is sought (form DV-100, item (2)):
Full name: _____

(2) Person Making Request for Confidentiality

Full name: _____

Court will complete item (3) if request is denied or items (4)–(13) if request is granted or partially granted.

Court's Decision

The court has reviewed the request for confidentiality and makes the following decision:

(3) ☐ Denied in Whole or in Part or More Information Needed

a. ☐ **DENIED.** The request to keep information of a minor or minors confidential is denied.

(1) ☐ **The court will NOT make a decision on the Domestic Violence Restraining Order request.** The request for restraining order and proposed order forms must be returned to the requester personally, destroyed, or deleted from electronic files and not filed with the court unless the person requesting the restraining order agrees to file them without any changes.

(2) ☐ **The court will make a decision on the Domestic Violence Restraining Order request.** The request for restraining order and any accompanying orders will be filed in the public file.

b. ☐ **More information is needed for court decision.** You must go to court on the date and time below to provide more information on why you need a request for confidentiality.

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____

c. If (3) is checked, only this page of this order form will be issued. All other pages may be discarded.

Date: _____

_____
Judge (or Judicial Officer)

Instructions to Clerk

If item (3) is checked, file page 1 in a public file and discard pages 2–5.
File the request for confidentiality (Form DV-160) in a confidential file.

This is a Court Order.

Case Number:

Court will complete the rest of this form if the request is partially or fully granted

4 ☐ GRANTED

a. ☐ **Granted in full.** The request to keep the information of a minor or minors confidential is granted in full. Details of the order are stated below in items 5–12 .

b. ☐ **Partially granted**. The request to keep the information of a minor or minors confidential is granted only in part. Details of the order are stated below in items 5–12 .

5 Findings

☐ The court finds all of the following *(all of these findings are required if granting in full or in part)*:

a. The right to privacy of the minors listed in item 6 overcomes the public's right of access to the information;

b. There is a substantial probability that the interests of the minors listed in item 6 will be prejudiced if the information is not kept confidential;

c. The order is narrowly tailored; and

d. No less restrictive means exist to protect the privacy of the minors in item 6.

6 ☐ Minors Subject to This Order

This order protects the information listed in item 8 for the following minors:

a. Name: _____

b. Name: _____

c. Name: _____

d. Name: _____

☐ *Check here if there are additional minors. Attach a sheet of paper and write "Attachment 2b(2)—Additional Minors" for a title.*

References in this order to "the minor" refer to all minors listed here.

7 WARNING: If the information listed in item 8 is misused or disclosed to anyone other than law enforcement, you may be fined up to $1,000 for contempt of court or face other sanctions.

8 Information to Be Kept Confidential From Public

The following information must be kept confidential and not viewable by the public. *(Check all that apply.)*

a. ☐ **Name of minor**

True name of minor in item 6 *(to be kept confidential)*	**Initials viewable by the public** *(to be used in redacted version)*

This is a Court Order.

b. ☐ **Address of minor**

The following addresses of the minors listed in item (6) must be redacted and must not be viewable to the public.

c. ☐ **Information relating to minor** *(check one):*

(1) ☐ The information CIRCLED in the attached copy of DV-100 or other document or form is made confidential by this order.

(2) ☐ The information below is made confidential by this order:

Location of Information *(for example, form #, page #, paragraph #, line #, attachment #, or exhibit #)*	**Information to Be Redacted** *(not viewable by the public)*
(a)	
(b)	
(c)	
(d)	

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write "Attachment 8c(2)" for a title.*

d. ☐ **Other:**

This is a Court Order.

Case Number:

9 Information to Be Kept Confidential From the Restrained Person

The restrained person *(full name)* _____ will have access to the following information checked in item 8 to comply with the protective order and prepare a response:

a. ☐ All the information, unredacted.

b. ☐ All the information except for the following:

_____

_____

_____

☐ *Check here if additional space is needed and include the information on a separate piece of paper, write "Attachment 9b" at the top, and attach to this form.*

WARNING: If the information listed in item 8 is misused or disclosed to anyone other than law enforcement, you may be fined up to $1,000 for contempt of court or face other sanctions.

10 Responsibility for Redacting All Forms and Documents

a. All forms and documents submitted with the request for confidentiality **must be redacted and filed with the Court** no later than *(number of court days or date)* _____ , by the:

(1) ☐ Court

(2) ☐ Person making the request

(3) ☐ Other: _____

b. The redacted documents must be filed in a public file, and the unredacted documents must be filed in a confidential file.

11 Court Records and Hearings

The information listed in item 8 must NOT be disclosed by the court in any:

a. Registers of actions, indexes, court calendars, court transcripts, or minute orders in this case.

b. Future court hearings, including any documents introduced during a hearing in this case or any civil case in the State of California.

12 To All Parties

a. The information made confidential by this order must NOT be made public in this case or any other civil case.

b. Any documents filed in this case or any other civil case that includes information listed in item 8 must be filed with Form DV-175, *Cover Sheet for Confidential Information*, attached to the front.

This is a Court Order.

13 To the Person Making the Request for Confidentiality:

You must do the following:

a. ☐ Have a copy of each form listed in item (c) below **personally served** on (given to) the restrained person.

(*See Form DV-200-INFO to find out how to meet this requirement. Personal service is required when the protected person is making this request and when Forms DV-100, DV-109 and DV-110 have NOT been served on the restrained person.)*

b. ☐ Have a copy of each form listed in item (c) mailed to the:

(1) ☐ Restrained person

(2) ☐ Protected person

(3) ☐ Other: _____

(See Form DV-250 to find out how to meet this requirement.)

c. Forms to serve:

(1) Form DV-170, *Notice of Order Protecting Information of Minor*
(Form DV-170 should be the first page with all others stapled behind.)

(2) ☐ Form DV-100, *Request for Domestic Violence Restraining Order*

(3) ☐ Form DV-109, *Notice of Court Hearing*

(4) ☐ Form DV-110, *Temporary Restraining Order*

(5) ☐ Form DV-160, *Request to Keep Minor's Information Confidential*
☐ Unredacted ☐ Redacted (if item 9b on DV-165 is checked)

(6) Form DV-165, *Order on Request to Keep Minor's Information Confidential*
☐ Unredacted ☐ Redacted (if item 9b on DV-165 is checked)

(7) Form DV-175, *Cover Sheet for Confidential Information* (leave blank)

(8) ☐ Other: _____

d. In any OTHER civil cases involving the minor, provide a copy of this order to the court in the other case.

Date: _____ _____
Judge (or Judicial Officer)

Instructions to Clerk

1. The original of all unredacted documents containing the information checked in item 8 must be kept in a confidential file and must NOT appear in any **register of action, calendar, index, minute order, or transcript.**

2. If item 9b is checked, provide the person making this request no more than three certified copies of Forms DV-100, DV-109, and DV-110, which must include any information in item 8 but must NOT include any information listed in item 9b. Use Form DV-170 as a cover sheet for each set of forms.

3. Any information listed in item 9b must not be available to the restraining person and filed in a confidential file.

This is a Court Order.

DV-170 Notice of Order Protecting Information of Minor

Clerk stamps date here when form is filed.

DRAFT

08-01-18

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in the case number and ticket number (if you have it):

Case Number:

1 Confidential Information

The court has made some information in this case confidential. Details of the Order for Confidentiality are in Form DV-165, *Order on Request to Keep Minor's Information Confidential*. Confidential information may be given ONLY to law enforcement to enforce the restraining order (attached Form DV-110).

2 Documents Attached to This Notice

The following documents contain confidential information:

a. ☐ Form DV-100, *Request for Domestic Violence Restraining Order*
b. ☐ Form DV-109, *Notice of Court Hearing*
c. ☐ Form DV-110, *Temporary Restraining Order*
d. ☐ Form DV-130, *Restraining Order After Hearing*
e. ☐ Form DV-160, *Request to Keep Minor's Information Confidential*
f. ☐ Form DV-165, *Order on Request to Keep Minor's Information Confidential*
g. ☐ Form DV-175, *Cover Sheet for Confidential Information* (leave blank)
h. ☐ Other: _____

3 Filing documents

If you file any document that contains any confidential information in this case or other civil case **you MUST also use form DV-175 as a cover sheet**. See form DV-165, item 8 for all information made confidential by the court.

4 NOTICE TO RECIPIENT: If you misuse or disclose the confidential information in this case to anyone other than law enforcement, you could be fined up to $1,000 for contempt of court or face other sanctions.

Instructions to Clerk

When providing copies of unredacted filed documents to any party, you must attach this cover sheet on top of the document or set of documents. Complete item 2 to indicate the forms that are attached.

DV-175 Cover Sheet for Confidential Information

CONFIDENTIAL

Clerk stamps date here when form is filed.

DRAFT

07-27-2018

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions to Parties

- When to use this cover sheet:
  - ☑ Form DV-165 has been issued by the court
    AND
  - ☑ You want to file a document or form that includes confidential information *(see Form DV-165, item (8))*.
- How to use this cover sheet:
  - Make **two copies** of the documents you want to file.
  - Complete this form, place it on top of the documents (both copies) you want to file, and file them with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in the case number:

Case Number:

Instructions to Clerk

1. The Court must review and approve a redacted version of documents attached to this cover sheet **before filing**.
2. Once approved by the Court, file the redacted version in a public file.
3. File the unredacted version and this cover sheet in a confidential file.

(1) Parties in This Case

a. Person who filed the case:
(Name): _____

b. Other party or parties:
(Name): _____

(2) Information About the Order for Confidentiality

a. The order was made in *(check one):*
(1) ☐ This case.
(2) ☐ Another civil case:
(a) Case number: _____
(b) County it was filed in: _____
Attach a copy of the order (form DV-165) if you have one.)

b. Minor protected by confidentiality order:
(1) Name: _____
(2) Name: _____
☐ *Check here if you need more space. Include the information on a separate piece of paper, write "Attachment 2" on the top, and attach it to this form.*

(3) I have attached two copies of the following documents:

☐ Form DV-_____

☐ Other form or document *(describe):* _____

Date: _____

_____
Type or print your name

▶ _____
Sign your name

DV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

1 Name of Person Asking for Order:

Your lawyer in this case *(if you have one):*
Name: _____ State Bar No.: _____
Firm Name: _____
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail):*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

2 Name of Person to Be Restrained:

The court will fill out the rest of this form.

Court fills in case number when form is filed.

Case Number:

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____

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

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form DV-100, *Request for Domestic Violence Restraining Order,* are *(check only one box below):*
(1) ☐ All **GRANTED** until the court hearing.
(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*
(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons for denial of some or all of those personal conduct and stay-away orders as requested in Form DV-100, *Request for Domestic Violence Restraining Order,* are:
(1) ☐ The facts as stated in Form DV-100 do not show reasonable proof of a past act or acts of abuse. (Family Code, sections 6320 and 6320.5.)
(2) ☐ The facts do not describe in sufficient detail the most recent incidents of abuse, such as what happened, the dates, who did what to whom, or any injuries or history of abuse.
(3) ☐ Further explanation of reason for denial, or reason not listed above:

_____
_____

Case Number:

5 Confidential Information Regarding Minor

a. ☐ A *Request to Keep Minor's Information Confidential* (Form DV-160) was made and **GRANTED** *(see Form DV-165, Order on Request to Keep Minor's Information Confidential, served with this form.)*

b. **If the request was granted, the information described on the order (Form DV-165, item 8) must be kept CONFIDENTIAL. The disclosure or misuse of the information is punishable as contempt of court, with a fine of up to $1,000 or possible sanctions.**

6 Service of Documents by the Person in 1

At least ☐ five ☐ _____ days before the hearing, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court file-stamped copy of this form (DV-109, *Notice of Court Hearing)* to the person in 2 along with a copy of all the forms indicated below:

a. DV-100, *Request for Domestic Violence Restraining Order* (file-stamped)

b. ☐ DV-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. DV-120, *Response to Request for Domestic Violence Restraining Order* (blank form)

d. DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*

e. DV-250, *Proof of Service by Mail* (blank form)

f. ☐ DV-170, *Notice of Order Protecting Information of a Minor,* and DV-165*, Order on Request to Keep Minor's Information Confidential* (file-stamped), **IF GRANTED**

g. ☐ Other *(specify):* _____

Date: _____ _____

Judicial Officer

Right to Cancel Hearing: Information for the Person in 1

- If item 4(a)(2) or 4(a)(3) is checked, the judge has denied some or all of the temporary orders you requested until the court hearing. The judge may make the orders you want after the court hearing. You can keep the hearing date, or you can cancel your request for orders so there is no court hearing.
- If you want to cancel the hearing, use Form DV-112, *Waiver of Hearing on Denied Request for Temporary Restraining Order*. Fill it out and file it with the court as soon as possible. You may file a new request for orders, on the same or different facts, at a later time.
- If you cancel the hearing, do not serve the documents listed in item 6 on the other person.
- If you want to keep the hearing date, you must have all of the documents listed in item 6 served on the other person within the time listed in item 6.
- At the hearing, the judge will consider whether denial of any requested orders will jeopardize your safety and the safety of children for whom you are requesting custody or visitation.
- You must come to the hearing if you want the judge to make restraining orders or continue any orders already made. If you cancel the hearing or do not come to the hearing, any restraining orders made on Form DV-110 will end on the date of the hearing.

Case Number:

To the Person in ❶ :

- The court cannot make the restraining orders after the court hearing unless the person in ❷ has been personally given (served) a copy of your request and any temporary orders. To show that the person in ❷ has been served, the person who served the forms must fill out a proof of service form. Form DV-200, *Proof of Personal Service,* may be used.
- For information about service, read Form DV-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the person in ❷ in time, you may ask for more time to serve the documents. Read Form DV-115-INFO, *How to Ask for a New Hearing Date*.

To the Person in ❷ :

- If you want to respond in writing, mail a copy of your completed Form DV-120, *Response to Request for Domestic Violence Restraining Order,* to the person in ❶ and file it with the court. You cannot mail Form DV-120 yourself. Someone age 18 or older — **not you** — must do it.
- To show that the person in ❶ has been served by mail, the person who mailed the form must fill out a proof of service form. Form DV-250, *Proof of Service by Mail,* may be used. File the completed form with the court before the hearing and bring a copy with you to the hearing.
- For information about responding to a restraining order and filing your answer, read Form DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested. You may bring witnesses and other evidence.
- **At the hearing, the judge may make restraining orders against you that could last up to five years.**
- **The judge may also make other orders about your children, child support, spousal support, money, and property and may order you to turn in or sell any firearms that you own or possess.**

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

SPR18-35

Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Justice, Bureau of Criminal Identification and Investigative Services Branch by Nicole Quinn, Manager	A	Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? Are there better ways to handle this process? • Our primary concern is that law enforcement needs to have access to accurate information to enforce orders and therefore the information in CARPOS/CLETS must be complete and unredacted. The committee should be advised that statistical reports run by the DOJ Research Center on restraining order data will be pulled from CARPOS. Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • Law enforcement agencies may be in a better position to comment on this question.	• The committees agree that any information necessary for enforcement will need to be provided for entry into CARPOS/CLETS. • No response required.
2.	California Lawyers Association, The Executive Committee of the Family Law Section (FLEXCOM)	A	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) discussed SPR 18-35, which	

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

SPR18-35

Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
	By Stephen Hamilton, Legislation Chair and Saul Bercovitch, Director of Governmental Affairs		details the proposed new forms, amendments to current forms and the proposed rules to implement Family Code section 6301.5 and Code of Civil Procedure section 527.6(v). FLEXCOM recognizes that implementation of Assembly Bill 953 (Stats. 2017, ch. 384) is complicated, but also recognizes the necessity of structure to provide a consistent method for litigants, and self-represented litigants in particular, to access protections granted under Family Code section 6301.5 and Code of Civil Procedure 527.6(v). FLEXCOM responds to the Request for Specific Comments as follows: 1. Does the proposal appropriately address the stated purpose? • Yes, if asking the courts to maintain all filings as confidential is not feasible due to the governing statutes, backlog, and delay in filings, and with the recognition that training of court staff and additional self-help center personnel will streamline implementation of these necessary measures. 2. Service of request form – Should the request form be served on all parties after the court rules on the request, and should service of the request be required whether the court grants or denies	• The committees believe that maintaining all filings as confidential would not comply with the governing statutes and case law, which require that the confidentiality order be narrowly tailored and no less restrictive means exist to protect the minor's privacy.

	Commentator	Position	Comment	Committee Response
			the request?	
			• FLEXCOM does not have specific comments in response to this question. One thought is that proposed rule 3.1161(d)(3)(C) permits the withdrawal of the Restraining Order/ Civil Harassment Request by returning the entire packet to the requesting party if the request for confidentiality is denied. So, if the request is denied, the requesting party may elect to withdraw the request and in such a case it seems that the request should not be served on all parties.	• The committees agree that if no other action is pending before the court in the case, service of the request for confidentiality (CH/DV-160) should not be served on the parties.
			Further, since item 6 on the new DV/CH 160 has information that the requesting party wants kept confidential from the restrained party, how will the court direct the service of the request containing that information which should not be known to the restrained person? The same question came up about the form 165 item 9 (order). Perhaps this is redacted prior to service?	• Yes, if the order for confidentiality (for CH/DV-165) includes an order that certain information be kept confidential even from the restrained party, the order would have to redacted prior to service on the restrained party
			Lastly, if the request is denied, then it seems that service of the request should be delayed in order to permit the requesting party to exercise the option of withdrawing the entire application. 3. Confidentiality of order denying request – Should the order denying the request for	• If the request for restraining order is submitted at the same time as the request for confidentiality, the requester would indicate on form CH/DV-160, item 7 and 8, whether they wish to withdraw their request for protective orders in the event the request for confidentiality is denied. Therefore the option

	Commentator	Position	Comment	Committee Response
			confidentiality be placed in the public file as proposed by rules at (e)(2)(E) or in the confidential file in order to protect the identity of the minor who may elect to withdraw the request for a protective order entirely? FLEXCOM does not have specific comments in response to this question. However, it seems that the order denying the request should be maintained in the confidential file for the reason set out in the question. Proposed rule 3.1161(d)(3)(C) permits the requesting party to withdraw the request for protection, but if the order denying the request were in the public file, the responding party may search court records and learn that a request for protection was once made. It is possible that the responding party may use such information to taunt the requesting party. One of our members has seen this scenario. It is not clear why the order denying the request for confidentiality would need to be in the public file, but it may be necessary in order to comply with the governing statutes. If it is not necessary to comply with the statutes, then maintaining the order denying the request in the confidential file seems best. 4. Reasons for request – Do the forms elicit the information needed to make the required findings? FLEXCOM does not have specific comments to this question, but the forms appear sufficient to	to withdraw in case of denial must be made at the time of the request, not after a denial, to avoid the time delay envisioned in the comment. If the request for protective orders is withdrawn then no service is needed. • The committees believe that the order denying the request for confidentiality should be in the public file, to provide transparency of court rulings. As proposed, forms CH/DV-165, are designed to provide minimal information regarding the requestor in the event the order is denied by the court. • The committees believe that the language proposed (now provided in CH/DV-160, item

	Commentator	Position	Comment	Committee Response
			elicit the information a court will need to make the required findings.	6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing.
			5. Redaction of confidential information	
			• FLEXCOM does not have specific comments in response to this question, other than to again express the concern that the procedure is complicated.	• The committees agree that the process is complicated but necessary to provide access to the new relief, while complying with the governing statutes.
			• One specific question raised was how the court would determine whether the requesting party is capable of preparing redacted material without assistance (proposed subdivision (g)(3)).	• The committees believe that judicial officers will be able to make this determination based on the specific circumstances of a case.
			• Upon implementation of this rule, FLEXCOM anticipates that courts will have trained their clerks and self-help centers to assist in this regard (maybe an internal questionnaire), and that courts will have assistance with this important element.	• Courts that commented indicated that training of staff will be needed prior to implementation.
			6. Subsequent filed documents	
			• FLEXCOM does not have specific	• The committees agree that the proposal

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Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			recommendations in response to this question, but generally agrees that the rules are sufficient to ensure that no protected information would be in the public court files. • Having the requesting party prepare a redacted version for the court to approve appears appropriate if this can be done without causing delay. 7. Notice to law enforcement FLEXCOM does not have specific comments in response to this question but the proposal to amend forms 110 to notify law enforcement that a confidentiality order has been issued appears to be sound.	provides sufficient guidance to ensure that no protected information would be in the public court files. • The proposal gives the court flexibility to decide, on a case-by-case basis, who should be responsible for redaction after considering a number of factors, including whether the requestor is capable of preparing redacted documents. • The committees will propose this addition in a future cycle and circulate for public comment.
3.	Family Violence Appellate Project (FVAP) by Shuray Ghorishi, Senior Attorney		Does the proposal appropriately address the state purpose?[1] Yes, as recognized, the implementation of the bill is convoluted, but the adoption of the rules and forms will, on balance, make the process of requesting confidentiality of minors' information easier for self-represented litigants, and it will provide for consistency on how the judicial branch processes these requests. However, given the threat of monetary fines for improper disclosure and the narrow scope of	• The committees also discussed the issue of other persons/entities needing to have

	Commentator	Position	Comment	Committee Response
			persons with whom confidential information can be shared under Family Code section 6301.5, there is a concern that this confidentiality order may detrimentally impact survivors of domestic abuse, especially survivors who are parents that share a child in common with their abusers. For instance, the statute disregards a broad range of persons who may need the confidential information, including the minor's name, to aid in the enforcement of the protective order, including child-care providers, medical and mental-health providers, and professional and non-professional supervisors for visitation. Additionally, the statute does not contain an intent requirement to impose penalties, increasing the likelihood that they could be awarded against survivors who provide this information to these third parties for their own protection and the protection of their children. And, even worse, abusers may use the threat of penalties as a way to further abuse their victims. Without information about the potential penalties of disclosing the minor's name or other information, it seems plausible that self-represented litigants would make a confidentiality request without understanding these or other repercussions. Accordingly, to mitigate the pragmatic consequences attached to this request, we encourage the Judicial Council to prepare an information sheet that can be distributed with these forms. Although not an exhaustive list, we	confidential information to aid with enforcement of protective orders (e.g. schools and child care providers). The committees concluded that access to information other than those listed in the statute is not permitted under the statute. Concerned stakeholders may want to seek a legislative amendment if it becomes a problem for them. • The committees agree that a Judicial Council INFO form may be helpful and will consider proposing one in the near future. An information sheet would need to circulate for public comment before implementation, so

	Commentator	Position	Comment	Committee Response
			suggest the following information be included: 1) an explanation of what the request to maintain confidentiality of minors' information is; 2) the purpose of the request with references to legislative history – specifically to enable minors themselves to make confidential restraining order requests; 3) legal information regarding the implications of disclosing confidential information to persons who are not law enforcement or the respondent; and 4) an explanation of what "redact" means.[2] FOOTNOTES: 1 Given FVAP's expertise in the field of domestic abuse, these comments address the proposed rule and forms related to Domestic Violence Prevention Act matters, although because the proposed rule and forms related to Civil Harassment Orders are nearly identical, some of the comments may also apply to that portion of this proposal. • Although it may be beyond the scope of this question, we also wonder how other entities who need to use the child's name in subsequent civil actions, e.g., the Department of Child Support Services, will discover that a confidentiality order was previously issued in a DVPA proceeding. Service of request form. Should the rules require that the Request to Keep Minor's Information Confidential (form CH-160 or DV-	cannot be completed at this time. In the meantime, information will be made available on the self-help section of www.courts.ca.gov before these forms go into effect. • The committees see this as a potential problem with this legislation, but it is outside the purview of the Judicial Council to address it. Concerned stakeholders may want to seek a legislative amendment if it becomes a problem for them.

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Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
			160) be served on all parties after it has been ruled on by the court? (See proposed rules at (e)(2)(D).) Should service of the request be required whether the court grants or denies the request? No, the Request to Keep Minor's Information Confidential ("Request") should not be served on all parties after it has been ruled on by the court. First, the statute requires only that confidential information be shared with the respondent so they can respond and comply with the request for protective order. The proposed Order on Request to Keep Minor's Information Confidential (form DV-165) and the proposed Notice of Order Protecting Information of Minor (form DV-170) accomplish that purpose. Second, the process is non-adversarial, so service of the Request only adds another burden to self-represented litigants in this cumbersome process. Yet more importantly, service of the Request should absolutely not be required if it is denied. As the legislative history explains, the purpose of the statute is to ensure a process of keeping a minor's information confidential, given the sensitive nature of the information included in these requests. (Sen. Com. on Rules, Analysis of Assem. Bill No. 953 [2017-2018 Reg. Sess.] Sept. 1, 2017, pp. 3-4.) Therefore, the potential for public consumption after a denial would not only defeat that purpose, but also may deter survivors of domestic abuse from seeking the protection they need. Indeed, the mere fact that	• The committees have concluded that if a request is granted, then the request for confidentiality (CH/DV-160) should be served on the restrained person or both parties, if the requester is not a party, to avoid ex parte communication with the court. However, any information that is made confidential from the restrained person would need to be redacted from form CH/DV-160 prior to service on the restrained person. • If a request is denied, and no other action is pending before the court in the case, service of the request for confidentiality (CH/DV-160) should not be served on the parties. However the committees concluded that if a case is ongoing, including an action for a restraining order, a denied request must be served on the restrained person to avoid the existence of ex parte communications which a party could not respond to. • The committees agree that the statute contemplates a non-adversarial process therefore service of the request for confidentiality would happen only after a decision has been made, if at all.

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

	Commentator	Position	Comment	Committee Response
			a Request has been filed could inflame a situation that may already be unstable and dangerous. While there is a well-established policy in California to allow maximum public access to judicial proceedings, the purpose of such policy rests upon the exposure of corruption, incompetence, inefficiency, prejudice, favoritism, and the proper operation of the judicial system. (Ass. Com. on Judiciary, Analysis of Assem. Bill No. 953 [2017-2018 Reg. Sess.] April, 25, 2018, pp. 3-4.) Here, there is no public interest in obtaining information in the Request, because keeping the information confidential does not encumber any of these objectives. Confidentiality of order denying request. If a request is not granted (i.e., denied or deferred for a hearing), should the order be placed in the court's public file (as provided in proposed rules at (e)(2)(E)), or in the confidential file in order to protect the identity of the minor who may, upon denial of the request for confidentiality, withdraw the request for a protective order entirely? • If the Request is denied or deferred for hearing, it should be placed in the court's confidential file because, as explained above, the disclosure of the information thwarts the purpose of the statute and may endanger the safety and well-being of survivors of domestic abuse and their children.	• The committee believes that the order denying the request for confidentiality should be in the public file, to provide transparency of court rulings. As proposed, forms CH/DV-165, are designed to provide minimal information regarding the requestor in the event the order is denied by the court.

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Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
			Reasons for request. Are questions 7a and 7b in the Request to Keep Minor's Information Confidential (forms CH-160 and DV-160) sufficient to elicit the information a court will need to make the required findings (first paragraph in item 7)? Should other or additional questions be included in the form? • Yes, the questions as currently phrased should elicit sufficient information. However, to better assist self-represented litigants, we encourage the Judicial Council to include an information sheet that provides specific examples of information that could be written in response to these questions. Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? Are there better ways to handle this process? • Yes, the proposed rule in DVPA matters strikes the right balance between the delay created by a potential backlog for the court in redacting all documents and	• The committees agrees that the language proposed (now provided in CH/DV-160, item 6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing. An information sheet may be developed in a future cycle. • See comment above on the information sheet.

	Commentator	Position	Comment	Committee Response
			the burden on self-represented litigants. However, an information sheet explaining the meaning of the term redact and examples of redactions could offset the burden on these litigants by making the process more understandable. • Additionally, to limit any potential delay and to maximize the requesting party's safety and well-being when the request for confidentiality is submitted concurrently with the protective order request, we encourage the Judicial Council to expressly state in proposed Rule 5.382(d)(3)(B) that a court may issue a temporary restraining order prior to redaction. As currently drafted, this subsection only provides that the domestic violence restraining order request may be "filed" after a ruling on the request for confidentiality. Subsequent filed documents. Are the rules for filing and redaction of documents filed later in the case (e.g., a response or a supplemental declaration) (proposed rules at (i)) sufficient to ensure that no protected information goes into public court files? Should the parties be required to file a redacted version along with the unredacted, even though court review would still be required to determine if the redaction was sufficient to keep the protected information confidential?	• The proposed rule makes clear that a request for restraining order must still be issued within the timeframe provided by existing law. The judicial officer will have to decide who will able to properly redact the documents within the statutory timeframe.

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			• Yes, the use of Cover Sheet for Confidentiality Information (form DV-175) would aid in ensuring that no protected information goes into a public court file. If having the parties prepare a redacted version would decrease any potential delay caused by a backlog, then we would recommend that the parties be required to file a redacted version, though this should be ordered on a case-by-case basis, after the court conducts a brief review of the matter and then determines whether the parties are able to comply with such an order.	• The committees agree that the proposal provides sufficient guidance to ensure that no protected information would be in the public court files.
			Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • Yes.	• The committees agree that some revision will be needed and will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice.
			Other Comments Additionally, we encourage the following: • Because the confidential conduct may not be directed at the minor, but witnessed by the minor, we suggest Rule 5.382(b)(3) be changed to: "The circumstances surrounding the protective order with respect to the minor. These include, but are not limited to, the allegations in the Request for Domestic Violence Retraining Order (form DV-100) that involve conduct directed, in whole or in part,	• The committees agree and have incorporated this change in the proposed rules.

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	Commentator	Position	Comment	Committee Response
			toward the minor; and…."	
			• An amendment to Rule 5.382(h)(1) that information may be shared with the respondent to allow him or her to respond to the request for the protective order, as this may avoid potential due process problems if a domestic violence restraining order is based on allegations unknown to the respondent. We suggest: "Information about a protected minor must be shared with the respondent only as provided in Family Code section 6301.5(d)(2)., limited to information necessary to allow the respondent to respond to the request for the protective order and to comply with the confidentiality order and the protective order."	• The committees agree and have incorporated this change in the proposed rules.
			• Number (8) on proposed form DV-160 prompts the requester to indicate whether he or she would like to withdraw the request if the confidentiality request is denied, but it does not contemplate a situation where a request is made with respect to multiple minors and is not uniformly denied.	• The committees could not find a way of incorporating this suggestion without making the form more complicated. The proposal includes the option to withdraw a request for restraining order in the event that *any* portion of the request is denied (partially granted).
			• Although number (8) on proposed DV-160 addresses whether to withdraw the request, we suggest adding another box that states: "If the request is denied, the court may make a decision on my request for restraining orders."	• The committees agree and have incorporated this change in the proposed forms.
			• Clarify on proposed form DV-165 that the	

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			hearing date applies to the decision on the confidentiality request and not to the domestic violence restraining order request.	• The committees agree and have incorporated this change in the proposed forms.
4.	Superior Court of Los Angeles County	N	The stated purpose is to conform with recent statutory changes, but the proposal goes beyond them. Redaction is not mandated by the new law and thus the proposed rule and form changes go beyond the requirements of the Family Code and Code of Civil Procedure in contemplating redaction. The two code sections clearly anticipate a balancing test to determine whether filed documents (e.g., CH-100, TRO, RO) should be kept in a confidential file and only released to law enforcement and the restrained party; but the code sections do not anticipate or mandate redaction – a very burdensome alternative. The rules and forms should not offer court staff redaction as an alternative. A different alternative would be to create two forms for the initial filings of these matters: one explicitly intended to be public; the other containing the minor's information, along with an explicit request that the form in its entirety be made confidential to law enforcement and the restrained party. Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed	• The committees believe that a process for redacting confidential information is necessary to comply with the constitutional requirements as provided in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999), which are codified in Family Code section 6301.5(b) and Code of Civil Procedure section 527.6(v). Those provisions provide that a judicial officer may order that information be kept confidential only after making findings that include that the order is narrowly drawn and there is no less restrictive alternative. Such findings are unlikely to be made as to all the information that all parties seek to make confidential. Should a court determine that any of the information in the document with the minor's information need not be kept confidential, a process such as envisioned in this comment would result in a court having to *add* information to a publicly filed document, which would be problematic and at least as burdensome as redacting.

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			rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? Are there better ways to handle this process? • As stated above, the redaction rules are unworkable and should be revised. What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. • The redaction tasks that would result from this proposal would be a very significant, ongoing burden on the courts.	• See response above. • The committees agree that the process is complicated but necessary to provide access to the new relief, while complying with the governing statutes..
5.	Superior Court of Orange County	AM	SPR 18-35 creates a rule that makes courts rule on the confidentiality issue prior to filing the request for protective orders. This will allow a method for a party to withdraw the protective order request if the confidentiality was NOT granted. This is problematic in the eFiling world for several reasons: 1) The request to make minor's information confidential is not a case initiating document. As we can't file the request for protective order until the request is decided upon, we have no way to create a case nor create a hearing in our CMS.	• The request for confidentiality (form CH/DV-160) must be the initiating document for a newly filed case because the court will rule on the request for confidentiality before any other request. • The committees defer to local courts as to what will work best for their e-filing systems and workflow. The proposal suggested by commentator, to treat newly filed cases that include a request for confidentiality as conditionally confidential until the court rules on the request for confidentiality, seems like a

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			2) Judges can only see imaged documents in created cases. We would have to print out documents as a workaround and forward them to the courtroom for decision. This actually discourages going paperless. 3) If the request for confidentiality is denied, we would have to create several workarounds in the CMS to track workload, as there was never a case we created. 4) As we cannot file a case initiating document until a courtroom has their hearing first, this will negatively impact our eFiling turnaround times. The time between the initial eFiling transaction and actual filing will be delayed. EFiling turnarounds has been and continues to be a sensitive issue for all eFiling courts. If we were to offer an alternative, the more prudent solution would be to seal the case upon receiving request for confidentiality and wait until it has been either granted or denied.	solution that will work for all circumstances, including when a request for confidentiality includes the minor's name.
			Does the proposal appropriately address the stated purpose? • Yes, but it creates efiling concerns as noted above.	• See response above.
			Reasons for request. Are questions 7a and 7b in the Request to Keep Minor's Information Confidential (forms CH-160 and DV-160)	

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			sufficient to elicit the information a court will need to make the required findings (first paragraph in item 7)? Should other or additional questions be included in the form? • Yes, questions 7a and 7b appear to be sufficient to elicit the information a court will need to make the required findings. No, additional questions are not needed. Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? Are there better ways to handle this process? • The rule appears to preclude the court's discretion to seal all relevant documents as an alternative to redaction. Is that the intent of the rule, or does the court have discretion to seal all relevant documents under certain conditions? Subsequent filed documents. Are the rules for filing and redaction of documents filed later in the case (e.g., a response or a supplemental declaration) (proposed rules at (i)) sufficient to ensure that no protected information goes into public court	• The committees agree that the language proposed (now provided in CH/DV-165, item 6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing. • • The commenter is correct. The statute at issue does not provide for sealing an entire record, but instead for making certain information confidential, and doing so by the least restrictive means. Whether it is appropriate to seal all relevant documents in a particular case is for the court to decide, consistent with the four findings that must be made under these provisions or under Cal. Rule of Court 2.550.

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			files? Should the parties be required to file a redacted version along with the unredacted, even though court review would still be required to determine if the redaction was sufficient to keep the protected information confidential? • Yes, the parties should be required to file a redacted version along with the unredacted. This will impose additional staff time to review and redact depending on increase in workload, hence the question noted above. Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • This court is not able to clarify what notice or information law enforcement may need or require. Suggest the JCC reach out to law enforcement community. What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.	• The proposed rules contemplate the judicial officer, not court staff, preparing the redacted version as one of the options under (f). The rules have been revised to clarify this point. The committees believe that the procedures provided under (f) and (g) give courts sufficient flexibility to ensure that no protected information goes into public court files. • The committees agree that this revision will be needed but will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice.

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			• Supervisory level staff, training and procedure specialist as well as case processing staff would be required to implement this. The estimated hours would be greater at first to prepare procedures, documentation and training, as well as implement initial system updates. The process would likely require two different staff members to ensure proper redaction. Specialized software may be required to assist in the process. The time required to redact documents on an ongoing basis depends on workload. Cost of implementation for this court could vary from $10,000 to $100,000 or more, depending on the factors specified above. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? • Yes. How well would this proposal work in courts of different sizes? • Larger courts have the staff to absorb the impact more so than smaller courts, where a large redaction request could sideline staff for a significant amount of time.	• No response required. • The committees agree that three months will be sufficient for implementation. • No response required.
6.	Superior Court of Orange County	NI	• If the request for confidentiality is	• Under the proposed Rules, the court

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	Commentator	Position	Comment	Committee Response
	Juvenile and Family Law Division		denied, the requester can seek to withdraw the request for restraining orders. The rule states the court must return the request for restraining order and the accompanying proposed order forms, unfiled. However, we do not have a process in place for withdrawing forms that have already been reviewed by the court. Would it be sufficient to seal that document in our case management system? This would ensure it would not be visible to the public.	would not consider the request for protective orders if the requester has indicated on CH/DV-160 that they wish to withdraw their request for protective orders if the request for confidentiality is denied.

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	Commentator	Position	Comment	Committee Response
7.	Superior Court of Riverside County	AM	Does the proposal appropriately address the stated purpose? • Yes Service of request form. Should the rules require that the Request to Keep Minor's Information Confidential (form CH-160 or DV-160) be served on all parties after it has been ruled on by the court? (See proposed rules at (e)(2)(D).) Should service of the request be required whether the court grants or denies the request? • As the request for confidentiality has to be served, the court's order on the request should likewise be served. Confidentiality of order denying request. If a request is not granted (i.e., denied or deferred for a hearing), should the order be placed in the court's public file (as provided in proposed rules at (e)(2)(E)), or in the confidential file in order to protect the identity of the minor who may, upon denial of the request for confidentiality, withdraw the request for a protective order entirely? • The request should remain in the confidential file until the court has ruled. If the request is denied the requestor should be given a specified,	• The statute contemplates a non-adversarial process therefore service of the request for confidentiality would happen only after a decision has been made, if at all. The request for confidentiality (CH/DV-160) would be served on the restrained person or both parties, if the requester is not a party, only if the request is granted and there is a pending action before the court. If a request is denied, and no other action is pending before the court in the case, service of the request for confidentiality (CH/DV-160) should not be served on the parties. • See response above. Further, the form has been revised to provide more information to the party on this point.

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	Commentator	Position	Comment	Committee Response
			albeit, brief period of time to withdraw the request for the protective order. This information should be included on the CH-160 and DV-160 forms. Further, the CH-160 and DV-160 forms should be modified to inform the petitioner that if a request for confidentiality is denied and the petitioner wishes to proceed with the request for a protective order, the request will be maintained in the public file. Reasons for request. Are questions 7a and 7b in the Request to Keep Minor's Information Confidential (forms CH-160 and DV-160) sufficient to elicit the information a court will need to make the required findings (first paragraph in item 7)? Should other or additional questions be included in the form? • It is far more likely that the court will be provided with the information it needs to make the required findings if self-represented litigants are asked to respond to more specific questions. As presently drafted the forms encourage litigants to provide a narrative that may or may not be relevant to the findings that the court is required to make. We suggest listing each required finding separately, and rewriting them in plain language (it is unlikely that a self-represented litigant will understand the	• The committees believe that the language proposed (now provided in CH/DV-165, item 6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing. The findings "less restrictive means" and "narrowly tailored" are essentially legal conclusions that the court must reach and it is hard to identify questions that would not require the party to argue against itself (e.g., "Are there

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			legal concept of "less restrictive means" or "narrowly tailored"). Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? • Yes, Section (f)(3) should be modified to permit law enforcement access to the confidential file to the extent necessary to enforce the order. Subsequent filed documents. Are the rules for filing and redaction of documents filed later in the case (e.g., a response or a supplemental declaration) (proposed rules at (i)) sufficient to ensure that no protected information goes into public court files? Should the parties be required to file a redacted version along with the unredacted, even though court review would still be required to determine if the redaction was sufficient to keep the protected information confidential? • Yes, if the confidential request is pending or has been granted. Both parties should be required to submit redacted and non-redacted documents.	simpler ways for protecting your privacy interests?") • The committees have added that law enforcement will be provided access for enforcement purposes only. • Given that most parties are self-represented in these actions, and the court will have to review documents prior to filing of any subsequently filed document, the committees believe that giving the

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				court flexibility to decide who should be responsible for redacting is the best use of court and litigant resources. For example, if the redaction is incorrect, the judicial officer would have to make another copy and correct the redaction or reject the documents for the party to redact again, causing a delay in filing.
			Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • Yes.	• The committees agree that some revision will be needed and will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice.
			What would the implementation requirements be for courts? • Train staff, revise procedures, create new codes for case management, possibly modification to the case management system.	• No response required.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? • No. Six months would be sufficient.	• Given that the law has been in effect since January 1, 2018, the committees believe these forms are necessary to provide access to the new relief and that three months provides sufficient time for implementation.
			How well would this proposal work in courts of different sizes?	

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			• Implementation is likely more complex for larger courts.	• No response required.
8.	Superior Court of San Bernardino County	A	Service of request form. Should the rules require that the Request to Keep Minor's Information Confidential (form CH-160 or DV-160) be served on all parties after it has been ruled on by the court? (See proposed rules at (e)(2)(D).) • No.	• The statute contemplates a non-adversarial process therefore service of the request for confidentiality would happen only after a decision has been

	Commentator	Position	Comment	Committee Response
				made, if at all. The committees have concluded that the request for confidentiality (CH/DV-160) would be served on the restrained person or both parties, if the requester is not a party, only if the request is granted and there is a pending action before the court. If a request is denied, and no other action is pending before the court in the case, service of the request for confidentiality (CH/DV-160) should not be served on the parties.
			Should service of the request be required whether the court grants or denies the request? • The Request to Keep Minor's Information Confidential" should not be required to be served if the TRO is denied and the party wishes not to proceed.	• See response above.
			Confidentiality of order denying request. If a request is not granted (i.e., denied or deferred for a hearing), should the order be placed in the court's public file (as provided in proposed rules at (e)(2)(E)), or in the confidential file in order to protect the identity of the minor who may, upon denial of the request for confidentiality, withdraw the request for a protective order entirely? • Remain confidential until the Court's ruling.	• The committees believe that the order denying the request for confidentiality should be in the public file, to provide transparency of court rulings. As

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				proposed, forms CH/DV-165, are designed to provide minimal information regarding the requestor in the event the order is denied by the court. If a request to keep minor's information confidential is granted, then any information that is made confidential must be redacted from the order before it can be filed publicly.
			Reasons for request. Are questions 7a and 7b in the Request to Keep Minor's Information Confidential (forms CH-160 and DV-160) sufficient to elicit the information a court will need to make the required findings (first paragraph in item 7)? Should other or additional questions be included in the form? • The proposed rules seem to provide sufficient guidance and flexibility for the courts and parties.	• The committees agree.
			Re Form CH-160 • If on paragraph 5, the Petitioner requests that the minor's address be kept confidential (from the public) and the Petitioner also requests that this address be kept confidential from the restrained person, how is this effectuated when the Restrained person will receive a copy of the Request if it is granted. In this situation, it will be necessary to direct the clerk or Judge to redact the information (minor's address) prior to filing the Request on the restrained party.	• The committees agree that the request to be served on the restrained person would have to be redacted prior to filing and service (contained at (f)(4) of the proposed rules).

	Commentator	Position	Comment	Committee Response
			• Some have said that the restrained person needs to know the minor's address in order to make the Order enforceable but that may not always be the case. If the Order is directed to a restrained person to stay away from the minor's address and by chance, the restrained person is at the address (not knowing it belongs to the minor) there is no violation until s/he learns of that situation and does not leave. Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and the parties (mostly self-represented parties)? Are there better ways to handle this process? • The proposed rules seem to provide sufficient guidance and flexibility for the courts and parties. Subsequent filed documents. Are the rules for filing and redaction of documents filed later in the case (e.g., a response or a supplemental declaration) (proposed rules at (i)) sufficient to ensure that no protected information goes into public court files? Should the parties be required to file a redacted version along with the	• Whether the restrained person must be provided with an address if a party has requested it be kept confidential will be up to the judicial officer. • The committees agree that the proposed rules provide sufficient guidance and flexibility to work well for the courts and parties.

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	Commentator	Position	Comment	Committee Response
			unredacted, even though court review would still be required to determine if the redaction was sufficient to keep the protected information confidential? • The parties should be required to file both an original version as well as the redacted version.	• Given that most parties are self-represented in these actions, and the court will have to review documents prior to filing of any subsequently filed document, the committees believe that giving the court flexibility to decide who should be responsible for redacting is the best use of court and litigant resources. For example, if the redaction is incorrect, the judicial officer would have to make another copy and correct the redaction or reject the documents for the party to redact again, causing a delay in filing.
			Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • Yes.	• The committees believe that some revision will be needed but will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice.
			What would the implementation requirements be for courts? • For example, training staff (please identify position and expected hours of	• No response required.

	Commentator	Position	Comment	Committee Response
			training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. This would require training of Legal Processing Assistants, Judicial Assistants, and Operation Supervisor I's not to exceed 8 hours overall along with revising procedures manuals. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? • Yes.	• The committees agree that three months will be sufficient time to implement this proposal.
9.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? • Yes. Q: Service of request form. Should the rules require that the Request to Keep Minor's Information Confidential (form CH-160 or DV-160) be served on all parties after it has been ruled on by the court? (See proposed rules at (e)(2)(D).) • Yes, the rules should require at the very least that the Request be served on all parties after it has been ruled on by the court. The concern is that it does not appear Family Code section 6301.5	• The committees agree. • The committees believe that the statute contemplates a non-adversarial process therefore service of the request for confidentiality would happen only after a decision has been made, if at all. The

	Commentator	Position	Comment	Committee Response
			authorizes the court to rule on the request without any notice being given to the other party, or to both parties if the request is by a non-party minor. Also, California Rule of Court, rule 2.551 regarding procedures for filing records under seal does not exempt notice of the request to file under seal. It would seem that the court would at least need to approve a request for waiver of notice by the requesting party for good cause - which should not be difficult to do. Should service of the request be required whether the court grants or denies the request? • Yes, service of the request should be required whether the court grants or denies the request. Q: Confidentiality of order denying request. If a request is not granted (i.e., denied or deferred for a hearing), should the order be placed in the court's public file (as provided in proposed rules at (e)(2)(E)), or in the confidential file in order to protect the identity of the minor who may, upon denial of the request for confidentiality, withdraw the request for a protective order entirely? • Yes, the order denying the request should be placed in the public file. Additionally, why would the CH/DV-160 be placed in the confidential file, if	*Request to Keep Minor's Information Confidential* (CH/DV-160) would only be served on the party or parties if the request is granted and if the request is denied but there is still an action pending before the court (e.g. requestor elects to proceed with the request for restraining order). • Same response as above. • The committees agree that an order denying the request (page 1 of CH/DV-165) should be filed in the public file. The committees believe that maintaining the

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

	Commentator	Position	Comment	Committee Response
			the court does not grant the request? Q: Reasons for request. Are questions 7a and 7b in the Request to Keep Minor's Information Confidential (forms CH-160 and DV-160) sufficient to elicit the information a court will need to make the required findings (first paragraph in item 7)? Should other or additional questions be included in the form? • Questions 7a and 7b do not address the third and fourth findings (order "narrowly tailored" and "no less restrictive means"), but it might be difficult to craft questions for the requester that will elicit the information – on a written form – that the court needs to make those findings. Our court suggests adding another question, 7c, re: What, if any, are other less restrictive ways to protect the minor's privacy? Q: Redaction of confidential information. In light of the short time frame involved in the underlying actions (generally requests for temporary restraining orders), do the proposed rules regarding redaction of the confidential information after an order is issued (proposed rules at (f) and (g)) provide sufficient guidance and flexibility to work well for the courts and	*Request to Keep Minor's Information Confidential* in a public file would have a chilling effect and work against the purpose of this statute. • The committees believe that the language proposed (now provided in CH/DV-165, item 6 of the proposal) will be sufficient to elicit information needed to make a determination in most cases. If the court needs additional information from the requester, the court may set the matter for hearing. The findings "less restrictive means" and "narrowly tailored" are essentially legal conclusions that the court must reach and it is hard to identify questions that would not require the party to argue against itself (e.g., "Are there simpler ways for protecting your privacy interests?")

	Commentator	Position	Comment	Committee Response
			the parties (mostly self-represented parties)? • No, requiring the court to review documents prior to filing may not be feasible given the short time frame in which restraining orders are scheduled and heard. Are there better ways to handle this process? • The onus of redacting documents should fall on the parties. Q: Subsequent filed documents. Are the rules for filing and redaction of documents filed later in the case (e.g., a response or a supplemental declaration) (proposed rules at (i)) sufficient to ensure that no protected information goes into public court files? Court review prior to filing does not appear to be feasible for TRO related filings as responses may be filed and served up to two days prior to the hearing. Should the parties be required to file a redacted version along with the unredacted, even though court review would still be required to determine if the redaction was sufficient to keep the protected information confidential? • Yes, parties should submit both redacted and unredacted versions. Each party will be served with a copy of the Order on Request to Keep Minor's Information Confidential, so the onus	• The committees believe that court review is necessary in order to protect confidential information. • Given that most parties are self-represented in these actions, and the court will have to review documents prior to filing, the committees believe that giving the court flexibility to decide who should be responsible for redacting is the best use of court and litigant resources. For example, if the redaction is incorrect, the judicial officer would have to make another copy and correct the redaction or reject the documents for the party to redact again, causing a delay in filing. • Same response as above.

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	Commentator	Position	Comment	Committee Response
			on redacting documents should fall on the party submitting the documents. • Any issues regarding the failure to redact documents can be dealt with at the hearing on the underlying issue. Q: Notice to law enforcement. Should the temporary restraining orders (forms CH-110 and DV-110) be amended to include notice to law enforcement that a confidentiality order has been issued? • Yes. Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. • Training staff, attorneys, drafting or changing docket codes (if used), printing and distribution of new forms, accommodating additional hearings, creating or revising any written internal procedures, training staff (operations clerks and courtroom clerks), and adding new filings to case management systems. Q: Would three months from Judicial Council approval of this proposal until its effective date	• This would not be feasible if the confidential information has already been made public or if there is information that the court makes confidential from the restrained person. • The committees believe that this revision will be needed but will propose it in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice. • No response required.

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	Commentator	Position	Comment	Committee Response
			provide sufficient time for implementation? • Yes, but more time may be needed for thorough training of court staff. Q: How well would this proposal work in courts of different sizes? • It appears that the proposal would work for courts of various sizes. However, depending on the number of requests that are granted, this could have a significant impact on workload if the court is required to review all documents for compliance with the order prior to filing. Rule 3.1161 • Subd. (a), second sentence: Wherever used in this rule, "parent" refers only to a parent who is a legal guardian. Comment -- The phrase "a parent who is a legal guardian" might be confusing to some. In other contexts, e.g., juvenile dependency and adoptions, a parent and a legal guardian cannot be the same person. That is, a legal guardian is by definition a nonparent who has been vested by the court with legal rights and responsibilities similar to those of a parent.	• Given that the law has been in effect since January 1, 2018, the committees believe these forms are necessary to provide access to the new relief and that three months provides sufficient time for implementation. • No response required. Instead of defining "parent" in the proposed rules, the committees have included a definition of "legal guardian" consistent with the definition of "legal guardian" found in Family Code section 6903.

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	Commentator	Position	Comment	Committee Response
			Is the phrase meant to exclude a parent who does not have legal custody of the minor? If so, is such a parent necessarily prohibited from requesting confidentiality for the minor? Or is the phrase merely intended to align the rule with CCP 527.6(v) ("minor or the minor's legal guardian")? Perhaps, because "parent" is always followed by "or legal guardian" throughout the rule (subds. (b)(4), (c)(1) & (2), et al.), this sentence is more confusing than helpful and should be deleted. • Subd. (d)(3)(A): Change "an order of" to "a request for"; change "adversary" to "adversarial." 'The court must determine whether to grant ~~an order of~~ a request for confidentiality without requiring that any notice of the request be given to the other party, or both parties if the minor is not a party in the proceeding. No ~~adversary~~ adversarial hearing is to be held.' • Subd. (d)(4): Change "order" to "request." (Alternatively, change "granting" to "issuing.") I'f the court finds that the request for confidentiality is insufficiently specific to meet the requirements under Code of Civil Procedure section 527.6(v)(2) for	• The committees agree and have made this change. • The committees agree and have made this change.

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

	Commentator	Position	Comment	Committee Response
			granting the ~~order~~ request, the court may take testimony from the minor, the minor's parent or legal guardian, the person requesting a protective order, or other competent witness, in a closed hearing in order to determine if there are additional facts that would support granting the ~~order~~ request.'	
			• Subd. (e)(2)(B): Change "an order requesting" to "a request for." 'If the court grants ~~an order requesting~~ a request for confidentiality of the minor's name and: . . .'	• The committees agree and have made this change.
			• Subd. (e)(2)(B)(i): Change "party's name" to "parties' names." 'If the minor is a party to the action, the court must use the initials of the minor. In addition, the court must use only initials to identify both parties to the action if using the other ~~party's name~~ parties' names would likely reveal the identity of the minor. '	• The committees agree and have made this change.
			• Subd. (e)(2)(B)(ii): Insert "minor's" and "and." 'If the minor is not a party to the action, the court must not include any information that would likely reveal the identity of the minor, including the minor's name, age, and gender, and whether the minor lives with the person making the request for confidentiality.'	• The committees have redrafted this section.

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	Commentator	Position	Comment	Committee Response
			• Subd. (e)(2)(C): Change "an order requesting" to "a request for." 'If the court grants ~~an order requesting~~ a request for confidentiality, the order must specifically identify the information about the minor …'	• The committees agree and have made this change.
			• Subd. (e)(2)(E)(i): For consistency with subd. (d)(3)(C)(ii) & (iii). Also, if the request for confidentiality is denied, there is no need to keep the request for confidentiality in a confidential file. 'The order denying confidentiality must be filed and maintained in a public file. ~~The request for confidentiality must be filed and maintained in a confidential file.'~~	• The committees have redrafted this section as subd. (e)(3)(A). However, the committees believe that maintaining the *Request to Keep Minor's Information Confidential* in a public file would have a chilling effect and work against the purpose of this statute.
			• Subd. (f) heading: Change "order" to request." 'Procedures to protect confidential information when ~~order~~ request is granted	• The committees have made this change
			• Subd. (f)(2): For consistency with subd. (d)(3)(C)(ii) & (iii). 'The redacted copy or copies must be filed and maintained in a public file, and the original unredacted copy or copies must be filed and maintained in a confidential file.'	• The committees have made this change.
			• Subd. (g) heading: Change "Standards	• The committees have made this change

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			for" to "Factors in" and insert "redaction." ~~Standards for~~ Factors in selecting redaction procedures	
			• Subd. (g)(5): It appears that the rule should either replace the word "orders" with "allegations" or reference the Temporary Restraining Order (CH-110) instead of the Request (CH-100), as the CH-100 does not contain orders. (*Same comment applies to 5.382(g)(5) DV-110 instead of DV-100)*	• Subdivision (g)(5) references "orders on the request" because the order may be reflected on forms CH/DV 109 or 110, or both.
			• Subd. (i)(1)(B)(i): Change "those" to "the procedures." 'Order a procedure for redaction consistent with ~~those~~ the procedures stated in (f);'	• The committees have made this change
			• Subd. (i)(2)(B): Insert "(form CH-165)." 'The minor or person making the request for confidentiality and any person who has been served with a notice of confidentiality must submit a copy of the order of confidentiality (form CH-165) in any other civil case involving the same parties'.	• The committees have made this change
			• Advisory Committee Comment, first paragraph, second sentence: The reference to "The form" is unclear. Would it be more precise to say, "The restraining order does not require the	• The committees have addressed this comment by changing "The form" to "The restraining order forms."

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	Commentator	Position	Comment	Committee Response
			address of a nonpetitioning minor"? Rule 5.382 Subd. (a), second sentence: Wherever used in this rule, "parent" refers only to a parent who is a legal guardian. Comment -- The phrase "a parent who is a legal guardian" might be confusing to some. In other contexts, e.g., juvenile dependency and adoptions, a parent and a legal guardian cannot be the same person. That is, a legal guardian is by definition a nonparent who has been vested by the court with legal rights and responsibilities similar to those of a parent. Is the phrase meant to exclude a parent who does not have legal custody of the minor? If so, is such a parent necessarily prohibited from requesting confidentiality for the minor? Or is the phrase merely intended to align the rule with CCP 527.6(v) ("minor or the minor's legal guardian")? Perhaps, because "parent" is always followed by "or legal guardian" throughout the rule (subds. (b)(4), (c)(1) & (2), et al.), this sentence is more confusing than helpful and should be deleted. Subd. (d)(3)(A): Change "an order of" to "a request for"; change "adversary" to	The commentator submitted these same suggestions for Rule 3.1161, therefore the responses for Rule 5.382 are the same responses provided for Rule 3.1161.

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	Commentator	Position	Comment	Committee Response
			"adversarial." The court must determine whether to grant ~~an order of~~ a request for confidentiality without requiring that any notice of the request be given to the other party, or both parties if the minor is not a party in the proceeding. No ~~adversary~~ adversarial hearing is to be held. Subd. (d)(3)(C)(iii): The subsection should be deleted. If the court does not find cause to make the minor's information confidential, why would the request be placed in the confidential file instead of the public file? Subd. (d)(4): Change "order" to "request." (Alternatively, change "granting" to "issuing.") If the court finds that the request for confidentiality is insufficiently specific to meet the requirements under Family Code section 6301.5(b) for granting the ~~order~~ request, the court may take testimony from the minor, the minor's parent or legal guardian, the person requesting a protective order, or other competent witness, in a closed hearing in order to determine if there are additional facts that would support granting the ~~order~~ request. Subd. (e)(2)(B): Change "an order requesting" to "a request for." If the court grants ~~an order requesting~~ a request	(The commentator submitted the same suggestions for Rule 3.1161, therefore the responses for Rule 5.382 are the same responses provided for Rule 3.1161.)

	Commentator	Position	Comment	Committee Response
			for confidentiality … Subd. (e)(2)(B)(i): Change "party's name" to "parties' names." … In addition, the court must use only initials to identify both parties to the action if using the other ~~party's name~~ parties' names would likely reveal the identity of the minor. Subd. (e)(2)(B)(ii): Insert "minor's" and "and." If the minor is not a party to the action, the court must not include any information that would likely reveal the identity of the minor, including the minor's name, age, and gender, and whether the minor lives with the person making the request for confidentiality. Subd. (e)(2)(C): Change "an order requesting" to "a request for." If the court grants ~~an order requesting~~ a request for confidentiality, the order must specifically identify the information about the minor … Subd. (e)(2)(D): Delete the second sentence. If an unredacted copy of form DV-160 is served on the restrained person, he or she will have access to all of the information supplied by the requester in item 6 ("Information to Be Kept Confidential From the Restrained Person") and item 7 ("Reasons for Request"). Some or all of this information might or might not be "necessary [for the Restrained Person] to	

	Commentator	Position	Comment	Committee Response
			comply with the restraining order and to respond to the restraining order request." However, any information the Restrained Person needs to comply with the RO or respond to the RO request will be provided when the ~~CH~~DV-165 (Order) is served on him or her. (See proposed subd. (f)(3).) Subd. (e)(2)(E)(i): For consistency with subd. (d)(3)(C)(ii) & (iii). The order denying confidentiality must be filed and maintained in a public file. ~~The request for confidentiality must be filed and maintained in a confidential file.~~ Subd. (f) heading: Change "order" to request." Procedures to protect confidential information when ~~order~~ request is granted Subd. (f)(2): For consistency with subd. (d)(3)(C)(ii) & (iii). The redacted copy or copies must be filed and maintained in a public file, and the original unredacted copy or copies must be filed and maintained in a confidential file. Subd. (g) heading: Change "Standards for" to "Factors in" and insert "redaction." ~~Standards for~~ Factors in selecting redaction procedures	

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	Commentator	Position	Comment	Committee Response
			Subd. (g)(5): It appears that the rule should either replace the word "orders" with "allegations" or reference the Temporary Restraining Order (DV-110) instead of the Request (DV-100), as the DV-100 does not contain orders. Subd. (i)(1)(B)(i): Change "those" to "the procedures." Order a procedure for redaction consistent with ~~those~~ the procedures stated in (f); Subd. (i)(2)(B): Insert "(form DV-165)." The minor or person making the request for confidentiality and any person who has been served with a notice of confidentiality must submit a copy of the order of confidentiality (form DV-165) in any other civil case involving the same parties. Form CH-160 Notice and Instructions: Is there a possible conflict between "*The other party in this case will have access to this form*" and '*You may also use this form to ask that information be kept confidential from the restrained person*" if the "other party" is the same individual as "the restrained person"? In such cases, this might deter the requester from supplying the information requested in items 6 and 7. Page 2, Item 3.b.: Change "Your" to "You,"	• The committees have revised the Notice and Instructions section of CH/DV-160 to make them more user friendly for SRL. The form currently provides answers to the questions: When do I use this form? What if there is information I don't want the restrained person to have? And, Who will see this form? • The committees have incorporated this

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			insert "your." '~~*Your*~~ *You do not have to give your telephone, fax, or e-mail.):'*	change.
			Pages 2 and 4, Items 5 and 6, heading: Lower case "f" in "From." (Cal. Style Manual, § 4:9.)	• A lower case "f" is consistent with the Judicial Council style guide.
			Pages 3, 4, and 5, left footers: Change "Revised" to "New."	• The committees have incorporated this change.
			Page 4, Item 7, first bullet point: Suggested edit. 'The minor's right to privacy overcomes the public's right of ~~the public~~ access to the information;'	• The language in this section tracks the exact language from the Ab 953.
			Page 4, Item 7, second paragraph: Delete the second period after "below."	• The committees have incorporated this change.
			Page 4, Item 7a: Change "checked" to "provided." Item 5 includes blank lines for written responses as well as checkboxes. 'Why should the information ~~checked~~ provided in item 5 be kept private or confidential?'	• The committees have incorporated this change.
			Page 5, Item 8: In heading, insert "I want to" and a period at the end of the sentence. Consider suggested edits. 'If the request for confidentiality is denied, I want to withdraw the request for restraining orders. *(This can ~~only~~ be requested only by the person asking for a restraining order (the person in item 1 on Form CH-100).)* ~~.~~ If this request to keep information confidential is DENIED, I ask the court to not make a decision on my request for a restraining	• The committees have incorporated some of these changes but also further redrafted this item.

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			order~~s~~. I understand that withdrawing my request means that I will not receive a restraining order in this case. Form CH-165 Page 1, Item 2: Change "and" to "or." '*Court will complete item 3 if request is denied ~~and~~ or items 4-13 if request is granted or partially granted.'* Page 1, Item 3: Insert "the." (See, e.g., items 4a and 4b.) 'The request to keep the information of a minor or minors confidential is denied.' Our court suggests deleting the second box under DENIED as the box makes it appear that the court has discretion on whether the person requesting the restraining order may withdraw their request which conflicts with 3.1161(d)(3)(C). Page 2, Item 5a: Suggested edit. 'The right to privacy of the minors listed in item 6 overcomes the public's right of ~~the public~~ access to the information;' Pages 2 and 4, Items 8 and 9, heading: Lower case "f" in "From." (Cal. Style Manual, § 4:9.) Page 3, Item 8b: Insert "the." 'The following addresses of the minors listed in item 6…' Page 3, Item 8c: Change "*Attachment 8*" to "*Attachment 8c*" (attachments might be necessary for items 8a, 8b, or 8d).	• The committees have made this change. • The committees have made changes to item 3 of CH/DV-165 to make it consistent with the sections of the request form (CH/DV-160, items 7 and 8(d)). The court will indicate on form CH/DV-165 whether the requester has elected to cancel or move forward with the request for restraining order. • The requested change was made. • Lower case "f" is consistent with the Judicial Council style guide. • The committees have incorporated this change. • All additional information for item 8 can be on a single attachment.

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			Page 5, item 13c(1): Change "behind" to "underneath it." '(Form CH-170 should be the first page with all others stapled ~~behind~~ underneath it.)'	• This change has been made.
			Page 5, item 13c(5): Delete (5) and renumber (6) – (8). If an unredacted copy of form CH-160 is served on the restrained person, he or she will have access to all of the information supplied by the requester in item 6 ("Information to Be Kept Confidential From the Restrained Person") and item 7 ("Reasons for Request"). Some or all of this information might or might not be "necessary [for the Restrained Person] to comply with the restraining order and to respond to the restraining order request." However, any information the Restrained Person needs to comply with the RO or respond to the RO request will be provided when the CH-165 (Order) is served on him or her.	• This section of the form has been changed to include a check box for a redacted version of CH/DV-160 and CH/DV-165, and a checkbox for an unredacted copy thereby eliminating any confusion.
			Page 5, Instructions to Clerk: Our court suggests including more of the items listed in item 11 ("Registers of actions, indexes, court calendars, court transcripts, or minute orders in this case"). 'The original copy of all unredacted documents containing the information checked in item 8 must be kept in a confidential file, and the information provided in item 8 must NOT appear in: • ~~Kept in a confidential file;~~	• The committees have incorporated this change.

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			• ~~Must NOT appear in~~ any register of actions; • ~~Must NOT appear in~~ any court calendar; ~~and~~ • ~~Must NOT appear in~~ any index~~.~~; • any court transcripts; and • any minute orders. Any information listed in item 9b must be sealed and filed in a confidential file.' Form CH-170 Item 1: Suggested edits. 'Confidential information ~~must~~ ~~ONLY~~ may be given ONLY to law enforcement to enforce the restraining order (attached Form CH-110).' Item 3 heading: Upper case "D" in "Documents." Item 3: Insert comma before "you MUST" and insert "on that document." Consider suggested edits in first sentence for clarity. 'If you file any document that contains confidential information in this case or any other civil case ~~that contains any confidential information,~~ you MUST also use Form CH-175 as a cover sheet on that document. See Form CH-165, item 8 for all information made confidential by the court.' Instructions to Clerk: Suggest changing "the	• The committees have incorporated this change. • The committees have incorporated this change. • The committees have incorporated this change except for the suggestion "on that document." • The committees have incorporated this

	Commentator	Position	Comment	Committee Response
			parties" to "any party" and changing "any form or set of forms" to "the document or set of documents." 'When providing copies of unredacted filed documents to ~~the parties~~ any party, you must attach this cover sheet on top of ~~any form or set of forms~~ the document or set of documents. Complete item 2 to indicate the forms that are attached.'	change.
			Center footer: Lower case "o" in "of" – "Notice of Order …" (Cal. Style Manual, § 4:9.)	• The committees have incorporated this change.
			Form CH-175	
			Instructions to Parties, last sentence: Change "it" to "them" and insert "the" before "court." Consider adding "(both copies)." 'Complete this form, place it on top of the documents you want to file (both copies), and file ~~it~~ them with the court.'	• The committees have incorporated these changes to the Instructions to Parties.
			If the committee's intention is to file the unredacted version and provide a copy to the filing party prior to judicial review, we propose moving # 3 to # 1. This will make it clearer to the clerk that judicial review of the unredacted version is not required before filing.	• Rules 3.1160(i)(1) and 5.382(i)(1) provide the rules for how to handle document filed after a confidentiality order has been issued.
			Form DV-109	
			Page 1, Item 4b: Change "*Civil Harassment*" to "*Domestic Violence*" and delete "s" from "*Orders*." 'Reasons for denial of some or all of those personal conduct and stay-away orders as requested in Form DV-100, *Request for ~~Civil~~*	• The committees have incorporated this change.

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Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
			~~*Harassment*~~ *Domestic Violence Restraining Order~~s~~*, are:' Page 2, Item 5b: Change "The" to "Any." '~~The~~ Any disclosure or misuse of the information is punishable …' Page 2, Item 6 heading: Lower case "t" in "The" – "the Person in 1." (Cal. Style Manual, § 4:9.) Page 2, Items 6a, 6c, 6d: Change "*Civil Harassment*" to "*Domestic Violence*" and delete "s" from "*Orders*." Item 6e: Delete "*of Response*." a. DV-100, *Request for ~~Civil Harassment~~ Domestic Violence Restraining Order~~s~~* (file-stamped) b. DV-110, *Temporary Restraining Order* (file-stamped) IF GRANTED c. DV-120, *Response to Request for ~~Civil Harassment~~ Domestic Violence Restraining Order~~s~~* (blank form) d. DV-120-INFO, *How Can I Respond to a Request for ~~Civil Harassment~~ Domestic Violence Restraining Order~~s~~*? e. DV-250, *Proof of Service ~~of Response~~ by Mail* (blank form) Page 3, third bullet point: For "*INFO*," change	• The committees have not incorporated this change. • This change has been made. • The form titles have been corrected to reflect the actual titles of each of the forms listed in item 6. • The committees have incorporated this change.

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

SPR18-35

Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
			italics to Roman – "DV-115-INFO" Page 3, fourth bullet point: Delete "s" from "*Orders*." Page 3, fifth bullet point: Delete "*of Response*." *Proof of Service ~~of Response~~ by Mail* Form DV-160 Notice and Instructions: Is there a possible conflict between "*The other party in this case will have access to this form*" and '*You may also use this form to ask that information be kept confidential from the restrained person*" if the "other party" is the same individual as "the restrained person"? In such cases, this might deter the requester from supplying the information requested in items 6 and 7. Page 2, Item 3.b.: Insert "your." '*You do not have to give <u>your</u> telephone, fax, or e-mail<u>.</u>):'* Pages 2 and 4, Items 5 and 6, heading: Lower case "f" in "From." (Cal. Style Manual, § 4:9.) Pages 3, 4, and 5, left footers: Change "Revised" to "New." Page 4, Item 7, first bullet point: Suggested edit. 'The minor's right to privacy overcomes the <u>public's</u> right of ~~the public~~ access to the information;'	• The committees have incorporated this change. • The committees have incorporated this change. *The commentator submitted the same comments on form CH-160 as the comments here on form DV-160. The committees' responses to these comments are the same as their response to the comments above on form CH-160.*

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

SPR18-35

Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
			Page 4, Item 7a: Change "checked" to "provided." Item 5 includes blank lines for written responses as well as checkboxes. 'Why should the information ~~checked~~ provided in item 5 be kept private or confidential?' Page 5, Item 8: In heading, insert "I want to" and a period at the end of the sentence. Consider suggested edits. 'If the request for confidentiality is denied, I want to withdraw the request for restraining orders. *(This can ~~only~~ be requested only by the person asking for a restraining order (the person in item 1 on Form DV-100).)* ~~.~~If ~~the~~ this request to keep information confidential is DENIED, I ask the court to not make a decision on my request for a restraining order~~s~~. I understand that withdrawing my request means that I will not receive a restraining order in this case.' Form DV-165 Page 1, Item 2: Change "and" to "or." '*Court will complete item 3 if request is denied ~~and~~ or items 4-13 if request is granted or partially granted.'* Page 1, Item 3: Insert "the." (See, e.g., items 4a and 4b.) 'The request to keep the information of a minor or minors confidential is denied.' Our court also suggests deleting the second box under DENIED as the box makes it appear that the court has discretion on whether the person requesting the domestic violence restraining	*The commentator submitted the same comments on form CH-165 as the comments here on form DV-165. The committees' responses to these comments are the same as their response to the comments above on form CH-1650.*

	Commentator	Position	Comment	Committee Response
			order may withdraw their request which conflicts with 5.382(d)(3)(C). Page 2, Item 5a: Suggested edit. 'The right to privacy of the minors listed in item 6 overcomes the public's right of ~~the public~~ access to the information;' Pages 2 and 4, Items 8 and 9, heading: Lower case "f" in "From." (Cal. Style Manual, § 4:9.) Page 3, Item 8b: Insert "the." 'The following addresses of the minors listed in item 6…' Page 3, Item 8c: Change "*Attachment 8*" to "*Attachment 8c*" in case attachments are necessary for items 8a, 8b, or 8d. Page 5, item 13c(1): Change "behind" to "underneath it" and insert period at end. '(Form CH-170 should be the first page with all others stapled ~~behind~~ underneath it.)' Page 5, item 13c(5): Delete (5) and renumber (6) – (8). If an unredacted copy of form DV-160 is served on the restrained person, he or she will have access to all of the information supplied by the requester in item 6 ("Information to Be Kept Confidential From the Restrained Person") and item 7 ("Reasons for Request"). Some or all of this information might or might not be "necessary [for the Restrained Person] to comply with the restraining order and to respond to the restraining order request." However, any	

	Commentator	Position	Comment	Committee Response
			information the Restrained Person needs to comply with the RO or respond to the RO request will be provided when the DV-165 (Order) is served on him or her. Page 5, Instructions to Clerk, paragraph 1: Suggest including more of items listed in item 11 ("Registers of actions, indexes, court calendars, court transcripts, or minute orders in this case"). 'The original copy of all unredacted documents containing the information checked in item 8 must be kept in a confidential file, and the information provided in item 8 must NOT appear in: ~~• Kept in a confidential file;~~ • ~~Must NOT appear in~~ any register of actions; • ~~Must NOT appear in~~ any court calendar; ~~and~~ • ~~Must NOT appear in~~ any index~~s~~; • any court transcripts; and • any minute orders.' Page 5, Instructions to Clerk, paragraph 2: Change "10(b)" to "9(b)" and change "DV-170" to "DV-175." '2. If item 9(b) is checked, provide the person making this request no more than 3 certified copies of Forms DV-100, DV-	

	Commentator	Position	Comment	Committee Response
			109, and DV-110, which must include any information in item 8 but must NOT include any information listed in ~~10(b)~~ 9(b). Use Form DV-~~170~~175 as a cover sheet for each set of forms.' Form DV-170 Item 1: Suggested edits. Confidential information ~~must ONLY~~ may be given ONLY to law enforcement to enforce the restraining order (attached Form DV-110). Item 3 heading: Upper case "D" in "Documents." Item 3: Insert comma before "you MUST" and insert "on that document." Consider suggested edits in first sentence for clarity. 'If you file any document that contains confidential information in this case or any other civil case ~~that contains any confidential information,~~ you MUST also use Form DV-175 as a cover sheet on that document. See Form DV-165, item 8 for all information made confidential by the court.' Instructions to Clerk: Suggest changing "the parties" to "any party" and changing "any form or set of forms" to "the document or set of documents." 'When providing copies of unredacted filed documents to ~~the parties~~ any party, you must attach this cover sheet on top of ~~any form or set of forms~~ the document or set of documents. Complete item 2 to indicate the	*The commentator submitted the same comments on form CH-170 as the comments here on form DV-170. The committees' responses to these comments are the same as their response to the comments above on form CH-170.*

	Commentator	Position	Comment	Committee Response
			forms that are attached.' Form DV-175 Instructions to Parties, last sentence: Change "it" to "them" and insert "the" before "court." Consider adding "(both copies)." 'Complete this form, place it on top of the documents you want to file (both copies), and file ~~it~~ them with the court.' If the committee's intention is to file the unredacted version and provide a copy to the filing party prior to judicial review, we propose moving # 3 to # 1. This will make it clearer to the clerk that judicial review of the unredacted version is not required before filing. DV-109, DV-160, DV-165, DV-170 and DV-175: The forms use a variety of descriptions for the protected person: "Protected Person", "Person who filed the case", "Person who requested restraining order", "Person seeking the restraining order", "Person in 1", "Person Asking for Order" and for the restrained person: "Restrained Person", "Person from whom protection is sought", "Person in 2", "Person to be Restrained". Suggest using one or two descriptions for consistency and ease of reference.	*The commentator submitted the same comments on form CH-175 as the comments here on form DV-1675. The committees' responses to these comments are the same as their response to the comments above on form CH-175* • The committees have incorporated this change.

SPR18-35

Protective Orders: Protecting Information of People Under 18 Years Old (Rules of Court, rules 3.1152, 3.1161, 5.382; Forms CH-109, CH-160, CH-165, CH-170, CH-175, DV-109, DV-160, DV-165, DV-170, and DV-175)

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

	Commentator	Position	Comment	Committee Response
10.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee's Joint Rules Subcommittee (JRS)		The JRS notes the following: • This law is going to be extremely difficult to properly execute, since many of these cases involve multiple people. • The rule requires that the other parties' names, addresses, etc. also must be redacted if leaving them unredacted would make it clear who the minor was. This would probably be the case often. • Perhaps a better rule should be that a minor who is requesting confidentiality be given a separate case number and file. The court could then order the entire minor's file confidential without involving the other parties. It would, of course, be heard with the other file, but that would avoid mistakes in redaction and solve the problem of what information the respondent should have. The respondent would get the paperwork with perhaps only the name redacted. • Civil harassment cases often involve neighbors and ex-friends, so the information is often already known to the respondent. This is even more likely in DV cases. They could instead	• The committees agree that the process is complicated but necessary to provide access to the new relief, while complying with the governing statutes. • The statute requires that the order is narrowly tailored which leaves room for judicial discretion in determining what information should be redacted. • The statute requires that this is a motion that is made within the larger case. • The statute requires that the order is narrowly tailored to balance the public's right of access to information and the minor's right to privacy. The information being kept confidential is not necessarily

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

	Commentator	Position	Comment	Committee Response
			be given the order that the file is confidential and what the penalty is for violating the rule.	known to the restrained person, and certainly not to the public.
			• This method would also greatly reduce the time the clerks need for training, checking redactions, properly filing, etc.	• This comment is expanding on the previous comment, and the same answer from above is applicable.
			• Service of the request should not be required, but service of a granted order should be, so the respondent knows to obey the order.	• The committees agree that an order granting confidentiality should be served on the restrained person and be served with a redacted version if any information is also kept confidential from the restrained person. The committees are concerned with courts receiving ex parte communication therefore have included in this proposal a requirement that the request for confidentiality also be served on the restrained person (and redacted if necessary) if there is a pending action in the case. For example, if there is also a request for restraining order pending with the court.
			• Law enforcement does not need to be advised. Any orders that go into the CLETS system will have to include identifying information in order to be enforced. Giving them notice would just confuse them.	• The committees believe that notice to law enforcement is needed and will propose changes to the forms in a future cycle. Judicial Council staff will continue to work with the Department of Justice on the best way to implement this notice.
			• If the request for confidentiality can be	• It is unlikely that courts would order

	Commentator	Position	Comment	Committee Response
			made at any time, what happens with earlier documents that may be in the possession of people outside of the court? Should there be a place to make an order to return or destroy all un-redacted documents?	return of documents that were provided appropriately and that were not in violation of any court order at the time, but courts will have to decide how to deal with these situations on a case-by-case basis.
			• Rules 3.1161(f)(3) and 5.382(f)(3): may add the child/guardian's attorney as someone who can also receive/review the confidential file?	• The statute does not expressly provide that a guardian may review a record if the court has ordered it made confidential. courts will have to decide how to deal with these situations on a case-by-case basis.
			• Form CH-160: if a party is asking to keep the address confidential, perhaps it would be better to not have them write it out on this form because this form will go to the other party. It could be especially problematic if the party is denied confidentiality and elects to withdraw the request for the RO and the other party would still have the address through this form. Maybe instead of writing out the address, the party checks the box for residential confidentiality and orally provides the court with the address at the hearing?	• The process is non-adversarial so in most cases there will not be a hearing. If there is information that is made confidential from the restrained person then that information will have to be redacted from the copy to be served on the restrained person. If it is an address that the restrained person is allowed to have access to but is to be kept confidential from the public then listing the address is appropriate because this puts the restrained person on notice which address is made confidential.

Item number: 37

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Electronic Filing and Service

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991 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:
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).
Proposals within the scope of this item include:
(a) Proposals to create and amend rules to conform to legislation enacted in 2017. For example, new provisions of Code of Civil Procedure section 1010.6 expressly require the Judicial Council to adopt rules of court related to disability access and electronic signatures for documents signed under penalty of perjury. The new provisions also require express consent for electronic service, which will require a rule amendment, and creation of a form for withdrawal of consent.
(b) Proposals based on suggestions from the public such as revising definitions and addressing a barrier to indigent users accessing services of electronic filing service providers.
(c) Proposals for technical amendments to amend rules language that is obsolete or otherwise unnecessary.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

Title
Rules and Forms: Electronic Filing and Service

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257

Recommended by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 14, 2018

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary

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 California Rules of Court 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.

Recommendation

The Information Technology Advisory Committee recommends, effective January 1, 2019, the Judicial Council:

1. Amend rule 2.250 of the California Rules of Court to:
    - Clarify the definition of "document."
    - Revise the definitions of "electronic service," "electronic transmission," and "electronic notification" in rule 2.250(b) to refer to the definitions in Code of Civil Procedure section 1010.6 rather than duplicate them.
    - Add a definition of "electronic filing manager" because it is a new term used in the rules.

- Add a definition of "self-represented," which excludes attorneys' rules applicable to self-represented persons that were intended to add protections for persons untrained in the law, not attorneys.

2. Amend rule 2.251 to require express consent for permissive electronic service consistent with the requirements of Code of Civil Procedure section 1010.6.
3. Amend rule 2.255 to:
    - Add electronic filing managers within the scope of the rule to ensure contracts with electronic filing managers will comply with Code of Civil Procedure section 1010.6.
    - Add a requirement that electronic filing service providers allow filers to create an account without having to provide payment information.
4. Amend rule 2.257 to create a procedure for electronically filed documents signed under penalty of perjury as required by Code of Civil Procedure section 1010.6.

The text of the amended rules are attached at pages 8–13.

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976, which amended provisions of Code of Civil Procedure section 1010.6 to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision requiring that starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service.

Analysis/Rationale

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.

Amendments to rule 2.250

Rule 2.250 contains the definitions for terms used in the electronic and filing service rules found in title 2, division 3, chapter 2 of the California Rules of Court.

Amending the definition of "document." The current wording of the definition states that a document, in relevant part, is "a pleading, a paper, a declaration, an exhibit, *or another filing*…" (Cal. Rules of Court, rule 2.250(b)(1), emphasis added.) This can be read to mean that a document must be something filed with the court and thus, for example, would exclude written discovery demands and responses. The proposed amendment removes this ambiguity by striking "filing" and replacing it with "writing." In addition, the amendment strikes "a paper" from "a pleading, a paper, a declaration, an exhibit…" because it is unnecessary in the definition.

Amending the definitions of "electronic service," "electronic transmission," and "electronic notification." The current definitions of "electronic service," "electronic transmission," and "electronic notification" in the rules duplicate the Code of Civil Procedure section 1010.6 definitions of those same terms. The amendments retain the terms in the rules' scheme of definitions but—for the actual definition components—delete the duplicative language and refer instead to Code of Civil Procedure section 1010.6. This reduces redundancies between the rules and the Code of Civil Procedure, and avoids the risk of the rules and the Code of Civil Procedure differing in their definitions should the Legislature amend section 1010.6.

Adding a definition of "electronic filing manager." The proposal includes amendments to rule 2.255, which add electronic filing managers within the scope of the rule. Because the term "electronic filing manager" was not previously used in the electronic filing and service rules, it is necessary to define it. The definition is based on descriptions of electronic filing managers the Judicial Council has used in past procurements for electronic filing manager contractors.

Adding a definition of "self-represented." The proposal adds a definition for "self-represented," which excludes attorneys from the scope of 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.

Amendments to rule 2.251

Rule 2.251 governs electronic service. The proposal amends rule 2.251(b), which governs permissive electronic service, to require express consent to electronic service and add a provision for how a party or other person may manifest consent. The current rules allow the act of electronic filing to serve as consent to electronic service. Effective January 1, 2019, Code of Civil Procedure section 1010.6 will no longer allow the act of electronic filing alone to serve as consent. (Code Civ. Proc., § 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" by agreeing to consent in an electronic service provider's terms of service, or filing a form consenting to electronic service.

Amendments to rule 2.255

Rule 2.255 governs contracts with electronic filing service providers. The proposed amendments to rule 2.255 add electronic filing managers within the scope of the rule to ensure contracts with

electronic filing managers will comply with Code of Civil Procedure section 1010.6, and add a requirement that electronic filing service providers allow filers to create an account without having to provide financial account information.

Adding electronic filing managers to the scope of the rule. The proposal adds electronic filing managers within the scope of rule 2.255. Code of Civil Procedure section 1010.6 includes specific requirements that courts and contractors must meet for access by persons with disabilities, and requires the Judicial Council to adopt rules to implement the requirements as soon as practicable, but no later than June 30, 2019. (Code Civ. Proc., § 1010.6(g).) Rule 2.255 already requires courts' contracts with electronic filing service providers to comply with requirements of Code of Civil Procedure section 1010.6. However, because courts may also contract with electronic filing managers and the rules of court do not account for contracts with electronic filing managers, the proposal amends rule 2.255 to include them.

Adding a requirement that electronic service providers allow filers to create an account without providing payment information. The proposal amends rule 2.255 to add subdivision (f) to require electronic filing service providers 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 electronic filing service providers 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." This change does not apply to the provision of actual services, unless the filer has a fee waiver.

Amendments to rule 2.257

The proposal amends rule 2.257 to create a procedure for electronically filed documents signed under penalty of perjury. Code of Civil Procedure 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 for electronic signatures made under penalty of perjury. (Civ. Code, § 1633.11(b).) In addition, the amendments add a definition of "electronic signature" to the rule, modeled after the definitions used in the Uniform Electronic Transactions Act and the Code of Civil Procedure.

Policy implications

The statutory requirement for the manifestation of affirmative consent through electronic means is new. The rule provisions addressing manifesting affirmative consent may require refinement in the future to address issues that may arise and become known when the requirement goes into effect on January 1, 2019.

Comments

This rules proposal circulated for public comment from April 9 to June 8, 2018. Four commenters responded to the invitation to comment either agreeing with the proposal or agreeing as modified. A chart with the full text of the comments received and the committee's responses is attached at pages 14 to 18.

Comments on the manifestation of affirmative consent to permissive electronic service. The Orange County Bar Association commented that "the provision for manifesting affirmative consent should reference by definition the requirements of [Code of Civil Procedure section] 1010.6 for 'express consent' rather than using the phrase 'manifest affirmative consent' which is merely a subset definition in the statute[.]"

The committee noted that the full requirements, not just a subset, of Code of Civil Procedure section 1010.6's express consent requirements are already captured in the rules. The option other than manifesting affirmative consent is to serve a notice on all the parties and filing the notice with the court." (Code Civ. Proc., § 1010.6(a)(2)(A)(ii).) This option is accounted for in existing rule 2.251(b)(1)(A).

Comments responsive to the invitation to comment's request for specific comments. Because there was some uncertainty on how a court or other parties would know someone had affirmatively consented to electronic service by electronic means, the invitation to comment asked for specific comments on (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. Two commenters submitted comments responsive to these questions recommending that the rules address how notice be given. The Superior Court of San Diego County provided specific recommendations on when a party manifests consent by agreeing to consent in the terms of service with an electronic service provider. The first recommendation is that there should be standard language used for parties to consent to electronic service, and the second was that a copy of the parties' acceptance be transmitted to the court by the electronic filing service provider. The court also commented that the party consenting should serve notice on all other parties. These comments are helpful for refinement of the rules to provide greater clarity and guidance, and the committee may develop them into proposals in the next rule cycle.

Alternatives considered

Amendments to rule 2.250

- The committee did not consider the alternative of not amending the definition of "document" because the existing definition contains ambiguity that may cause confusion.
- The committee considered the alternative of not amending the definitions of "electronic service," "electronic transmission," and "electronic notification." The committee received specific comments concerning this topic during the amendments to the electronic filing and service rules in 2017 and agreed with the comments that duplicating the definitions already contained in statute was unnecessary.

- The committee did not consider the alternative of not defining "electronic filing manager" because the term could be unclear if undefined.
- The committee considered the alternative of not adding a definition for "self-represented" as it has not been necessary to define it previously. However, including the definition provides greater clarity for the purpose of having separate requirements for "self-represented," which is to protect persons who do not have attorneys or who are not attorneys.

Amendments to rule 2.251. The committee considered making a technical amendment to the consent requirements in rule 2.251(b) to ensure the rules comply with Code of Civil Procedure section 1010.6's express consent requirements without interpreting the statute's requirement for "manifesting consent through electronic means." However, during the development of the proposal, the committee received public comments from electronic filing service providers raising concerns over uncertainty in the meaning of "manifesting affirmative consent" and providing an interpretation, which was integrated into the proposal.

Amendments to rule 2.255. The committee did not consider the alternative of not adding electronic filing managers to the scope of the rule because including electronic filing managers is necessary to comply with the requirements of Code of Civil Procedure section 1010.6(g).

The court did not consider the alternative of not adding new subdivision (f) because adding the subdivision removes a barrier to filers without access to credit or banking services. The committee limited the scope of the rule to ensure it was targeted at only the ability to create an account, not to use the services, which can require payment information or, if applicable, a fee waiver.

Amendments to rule 2.257. The committee did not consider the alternative of not creating a procedure for electronic signatures on documents filed under penalty of perjury. Code of Civil Procedure section 1010 requires creation of the rule by January 1, 2019.

Fiscal and Operational Impacts

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee commented on expected impacts on court operations as a result of rule 2.251. Specifically:

- Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.);
- Increased court staff workload; and
- New configurations and workflows will have to be designed and implemented in all case management systems to manage the notices and the potential for withdrawal of consent.

Attachments and Links

1. Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257, at pages 8–13
2. Chart of comments, at pages 14–18
3. Link A: Code Civil Proc., § 1010.6, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6*

Rules 2.250, 2.251, 2.255, and 2.257 of the California Rules of Court are amended, effective January 1, 2019, to read:

Rule 2.250. Construction and definitions

(a) * * *

(b) Definitions

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

(1) A "document" is a pleading, ~~a paper,~~ a declaration, an exhibit, or another ~~filing~~ writing submitted by a party or other person, or by an agent of a party or other person on the party's or other person's behalf. A document is also a notice, order, judgment, or other issuance by the court. A document may be in paper or electronic form.

(2) "Electronic service" has the same meaning as defined in Code of Civil Procedure section 1010.6 ~~is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party's or other person's attorney, through an electronic filing service provider, or by a court~~.

(3) "Electronic transmission" has the same meaning as defined in Code of Civil Procedure section 1010.6 ~~means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service~~.

(4) "Electronic notification" has the same meaning as defined in Code of Civil Procedure section 1010.6 ~~means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded~~.

(5)–(8) * * *

(9) An "electronic filing manager" is a service that acts as an intermediary between a court and various electronic filing service provider solutions certified for filing into California courts.

(10) "Self-represented" means a party or other person who is unrepresented in an action by an attorney and does not include an attorney appearing in an action who represents himself or herself.

Rule 2.251. Electronic service

(a) * * *

(b) Electronic service by express consent ~~of the parties~~

(1) ~~Electronic service may be established by consent.~~ A party or other person indicates that the party or other person agrees to accept electronic service by:

(A) Serving a notice on all parties and other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or

(B) ~~Electronically filing any document with the court. The act of electronic filing is evidence that the party or other person agrees to accept service at the electronic service address the party or other person has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties or other self-represented persons; they must affirmatively consent to electronic service under subparagraph (A).~~ 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.

(C) A party or other person may manifest affirmative consent under (B) by:

(i) Agreeing to the terms of service agreement with an electronic filing service provider, which clearly states that agreement constitutes consent to receive electronic service electronically; or

(ii) Filing *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV).

(2) A party or other person that has consented to electronic service under (1) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the

designated agent for service for the party or other person in the case, until such time as the party or other person designates a different agent for service.

(c)–(k) *** * ***

Rule 2.255. Contracts with electronic filing service providers and electronic filing managers

(a) Right to contract

(1) A court may contract with one or more electronic filing service providers to furnish and maintain an electronic filing system for the court.

(2) If the court contracts with an electronic filing service provider, it may require electronic filers to transmit the documents to the provider.

(3) A court may contract with one or more electronic filing managers to act as an intermediary between the court and electronic filing service providers.

~~(3)~~(4) If the court contracts with an electronic service provider or the court has an in-house system, the provider or system must accept filing from other electronic filing service providers to the extent the provider or system is compatible with them.

(b) Provisions of contract

(1) The court's contract with an electronic filing service provider may:

(A) Allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee;

(B) Allow the provider to make other reasonable requirements for use of the electronic filing system.

(2) The court's contract with an electronic filing service provider must comply with the requirements of Code of Civil Procedure section 1010.6.

(3) The court's contract with an electronic filing manager must comply with the requirements of Code of Civil Procedure section 1010.6.

(c) Transmission of filing to court

(1) An electronic filing service provider must promptly transmit any electronic filing and any applicable filing fee to the court directly or through the court's electronic filing manager.

(2) An electronic filing manager must promptly transmit an electronic filing and any applicable filing fee to the court.

(d) * * *

(e) Ownership of information

All contracts between the court and electronic filing service providers or the court and electronic filing managers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use.

(f) Establishing a filer account with an electronic filing service provider

(1) An electronic filing service provider may not require a filer to provide a credit card, debit card, or bank account information to create an account with the electronic filing service provider.

(2) This provision applies only to the creation of an account and not to the use of an electronic filing service provider's services. An electronic filing service provider may require a filer to provide a credit card, debit card, or bank account information before rendering services unless the services are within the scope of a fee waiver granted by the court to the filer.

Rule 2.257. Requirements for signatures on documents

(a) Electronic signature

An electronic signature is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

~~(a)~~(b) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by that person if filed electronically provided that either of the following conditions is satisfied:

(1) The declarant has signed the document using an electronic signature ~~a computer or other technology, in accordance with procedures, standards, and guidelines established by the Judicial Council~~ and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct; or

(2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that the original, signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:

(A) At any time after the electronic version of the document is filed, any party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

(B) Within five days of service of the demand under (A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

(C) At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(D) Notwithstanding (A)–(C), local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.

~~(b)~~(c) * * *

~~(c)~~(d) * * *

~~(d)~~(e) * * *

~~(e)~~(f) *** * ***

~~**Advisory Committee Comment**~~

~~**Subdivision (a)(1).** The standards and guidelines for electronic signatures that satisfy the requirements for an electronic signature under penalty of perjury are contained in the Trial Court Records Manual.~~

ITC SPR18-36
Technology: Rules Modernization Project

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

#	Commentator	Position	Comment	Committee Response
1	1971 By Thomas S Hubbard, Jr. President & CEO Organization: 1971 311 Cobblestone Court Chapel Hill, NC 27514 Tel: 571-721-1485 Email: TSHUBBARDJR@AMVSR.COM	A	[Comments omitted. Comments were of a commercial nature unrelated to the proposal.]	The committee appreciates the support.
2	Orange County Bar Association By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710	AM	The OCBA provides the following responses to the request for specific comments: (a) we believe the proposal appropriately addresses the stated purposes if amended as below; (b) the provision for manifesting affirmative consent should reference by definition the requirements of CCP §1010.6 for "express consent" rather than using the phrase "manifest affirmative consent" which is merely a subset definition in the statute; (c) the proposed Rule should specifically address how notice of express consent is to be given to the court and other parties and persons; since the statute is ambiguous in those regards the Council should adopt any simple	The committee appreciates the support and recommendations. With respect to (b), the committee notes that the rules capture the full scope of Code of Civil Procedure section 1010.6's express consent requirements. The option to serve a notice on all parties is in existing rule 2.251(b)(1)(A).

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

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

			notice or proof of service procedure as may be in conformity with CCP §1010.6.	
3	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst Management Research Unit 111 N. Hill Street, Room 620 Los Angeles, CA 90012 Tel: 213-633-0452	AM	**Suggested Modifications:** **Rule 2.250 (b)(1)** The proposed definition allows confusion, inasmuch as it leaves open the possibility of a person e-filing a hearing exhibit, or trial exhibit. The language should explicitly exclude such exhibits from the definition in 2.250(b)(1), or allow courts to exclude them through local rules. **Rule 2.251 (c)(1)** To ensure that there is no confusion between 2.251(b) and (c). We recommend amending **2.251(c) Electronic service required by local rule or court order** to read: "(1) **Notwithstanding any provisions regarding consent to electronic service, a** court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil	The committee appreciates the support and recommendations. "Exhibit" is part of the existing rule definition and not impacted by the amendment. The court does have authority to make local rules on electronic filing under rule 2.253. Rule 2.251(c)(1) is not within the scope of the proposal, but the committee appreciates that the suggested language may improve clarity. The committee may consider the recommendations for next year's rules cycle.

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

			Procedure section 1010.6 and the rules in this chapter."	
4	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101	AM	Q: Does the proposal appropriately address the stated purpose? Yes. 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." Q: Is the provision for manifesting affirmative consent clear and does it adequately capture how a party or other person may manifest affirmative consent? Yes. Q: 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.	The committee appreciates the support and recommendations. The comments are helpful in the committee's consideration of how the manifestation of affirmative consent will work and the committee may consider the recommendations to refine the rules in the next rules cycle.

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

			Our court proposes that the committee create standard language for parties to consent to service by the method outlined in 2.251(b)(1)(C)(i). The court or court's electronic filing service providers could then include that language in their filing portal, which would allow parties to consent by accepting the terms. A copy of the acceptance would then be transmitted to the court by the service provider. If express consent is provided by filing a Consent to Electronic Service and Notice of Electronic Service Address (JC Form # EFS-005-CV) as indicated in 2.251(b)(1)(C)(ii), the court is provided notice through the filing. Our court proposes that the rule include that if a party manifests affirmative consent by either of the methods listed in 2.251(b)(1)(C), he/she is required to serve notice on all other parties.	
5	TCPJAC/CEAC Joint Rules Subcommittee (JRS) By Corey Rada, Senior Analyst Judicial Council and Trial Court Leadership | Leadership Services Division Judicial Council of California	AM	The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or	The committee appreciates the support, insight into the impact on court operations, and rule recommendation.

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

	2860 Gateway Oaks Drive, Suite 400 Sacramento, CA 95833-3509 Tel. 916-643-7044 E-mail: Corey.Rada@jud.ca.gov www.courts.ca.gov		security equipment, Jury Plus/ACS, etc.) • Increases court staff workload. • New configurations and workflows will have to be designed and implemented in all case management systems to manage the notices and the potential for withdrawal of consent. *Suggested Modifications:* Rule 2.250 (b)(1) The proposed definition allows confusion, inasmuch as it leaves open the possibility of a person e-filing a hearing exhibit, or trial exhibit. The language should explicitly exclude such exhibits from the definition in 2.250(b)(1), or allow courts to exclude them through local rules.	The inclusion of "exhibit" in the definition of "document" is part of the existing rule definition and not impacted by the amendment. The court does have authority to make local rules on electronic filing under rule 2.253.

Item number: 38

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Remote Access to Electronic Records. Adopt Cal. Rules of Court, rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503.

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991, 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 Entitiies, Parties, Parties' Attorneys, and 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.)
Two committees, the Information Technology Advisory Committee (ITAC) and Civil and Small Claims Advisory Committee (CSCAC), circulated two versions of rule 2.503. These versions do not conflict and staff developed a reconciled version of the rule to account for the amendments made by each committee. The ITAC proposal had already been through ITAC and the JCTC before the two versions were discovered. Staff presented the reconconciled version to the ITAC and JCTC chairs, who approved of including the reconciled version with the ITAC materials. The ITAC Judicial Council report cross-references the CSCAC Judicial Council report. CSCAC approved the reconciled version on rule 2.503 at its August 6, 2018 meeting.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018:

Title
Rules and Forms: Remote Access to Electronic Records

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503

Recommended by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 14, 2018

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends that the Judicial Council adopt a new set of rules of court governing remote access to electronic records by parties, parties' attorneys, court-appointed persons, legal organizations, qualified legal services projects, and government entities. This proposal advances a major initiative of the judicial branch's *Tactical Plan for Technology 2017–2018* to develop rules "for online access to court records for parties and justice partners." These changes will facilitate the trial courts' existing relationships with these persons and entities, and will provide clear authority for the trial courts to provide them with remote access to electronic court records. The committee also recommends limited amendments to the existing public access rules to bring them into conformance with the new rules.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend chapter 2 of division 4 of title 2 of the California Rules of Court to split the chapter into the following four articles to organize the chapter topically and accommodate the new proposed rules:
   - Article 1. General Provisions
   - Article 2. Public Access
   - 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
   - Article 4. Remote Access by Government Entities
2. Adopt rules 2.515–2.528 and 2.540–2.545 to allow remote access to electronic records by specified persons.
3. Amend rules 2.500–2.503 to expand the scope of the chapter and define new terms relevant to remote access.

The text of the new and amended rules is attached at pages 17–43.

Relevant Previous Council Action

The Judicial Council adopted the public access rules effective July 1, 2002, and has amended them periodically since then. The last amendments were in 2013. The public access rules contain provisions for access to electronic court records both in the courthouse and remotely.

Analysis/Rationale

The existing rules governing electronic access to trial court records are 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 actions, 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." (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.

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. Under the leadership of the Information Technology Advisory Committee (ITAC), nine advisory committees[1] formed the Joint Ad Hoc Subcommittee on Remote Access to develop a remote access rules proposal

[1] The committees include the 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.

applicable to parties, their attorneys, and justice partners. 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 the chapter 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.** Rules 2.500–2.502.
  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.** Rules 2.503–2.507.
  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.** Rules 2.515–2.528.
  This new article covers remote electronic access by those listed in the article's title.
- **Article 4. Remote Access by Government Entities.** Rules 2.540–2.545.
  This new article 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 on access to electronic trial court records to include remote 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 the chapter 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.

The proposal amends subdivision (b) by replacing the existing language with a new provision. Because the new rules expand the scope of remote access by allowing certain persons and entities remote access not allowed to the public, 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 posted publicly on *www.courts.ca.gov* and may supplement that with guidance in plain language on their own websites.

Rule 2.502. Definitions. The proposal expands on the definitions found in this rule 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 of this report 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 remotely access what. Ultimately, the new rules contemplate that a natural human being will be remotely accessing electronic court records, and the rules identify which natural human beings 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 human beings.

Article 2. Public Access

Article 2 largely retains the existing public access rules found in rules 2.503 through 2.507. Rule 2.503 is the only one with substantive amendments and ITAC's proposed amendments are minor. They clarify that the rules in this article apply only to access to electronic records by the public. The amendments also make a technical change to the enumerated list of electronic records to which a court must provide for electronic access by the public. Under rule 2.503(b), all court records in civil cases must be available remotely, if feasible, "except those listed in (c)(1)–(9)." Subdivision (c) was amended effective January 1, 2012, with an addition of a tenth case type (in subd. (c)(10)), but there was no corresponding amendment to the reference to the list in subdivision (b). The omission was accidental and the proposal corrects the incongruity. The proposal also makes a technical correction consistent with the rest of the rules by adding "court" to "all records" so that it states "all court records."

The Civil and Small Claims Advisory Committee is concurrently recommending a substantive amendment to rule 2.503 under the council report titled, "Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS." The amendment adds an eleventh case type to 2.503(c)—for gun violence prevention proceedings—requiring yet another change to both the above-mentioned cross-reference in rule 2.503(b) and the list of case types under 2.503(c). To reconcile all of the amendments to rule 2.503 recommended by both the Civil and Small Claims Advisory Committee and ITAC, the committees have jointly proposed one consolidated, amended rule 2.503 for the council's consideration.

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

This article contains new rules to cover remote access by those listed in the article's title. Each of these types of users is 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, as with the public access rules, require courts to provide remote electronic access only 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 they are clear to a person accessing the records. For example, under rule 2.515—the rule explaining the scope of article 3—there is a provision stating that the rules do not limit the access available under article 2. This statement is repeated in 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 2.517.

Rule 2.515. Application and scope. This rule provides an overview of the scope of article 3 and who may access electronic records under that article.

Rule 2.516. Remote access to extent feasible. This 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, technical capabilities, and security resources may impact the feasibility of providing remote access.

Rule 2.517. Remote access by a party. This 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. This rule allows a party who is a person to designate other persons to access the party's electronic records. 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 is not entitled to view the court record at the courthouse, the designee cannot remotely access the electronic record. In addition, regardless of whether there are publicly accessible court records at the courthouse for criminal, juvenile justice, or child welfare records, the party's designee rule does not allow

remote access to those particular records. Criminal electronic records were exempted because of the sensitivity of the information, combined with the potential for a person to be subject to pressure from gangs to designate gang members to be allowed remote access to the person's criminal records. Juvenile justice and child welfare electronic records were exempted because of the sensitivity of the information, combined with the fact that counsel are typically involved and attorneys for minors and parents can gain access under other rules.

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. This 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 under rule 2.518, in which case the provisions of that rule would apply.

Attorneys of record should already be known to the court for remote access purposes. The rule also allows courts to provide remote access to an attorney who is not the attorney of record in an underlying proceeding but who may nonetheless be assisting a party. For example, he or she may be providing undisclosed representation and assisting a party with limited aspects of the case, such as document preparation, without becoming the attorney of record.

Subdivision (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 he or she 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.

As with the other rules, the level of access under this rule is limited to what a member of the public could get if he or she went to the courthouse. An undisclosed attorney providing limited scope representation (as opposed to an attorney providing noticed limited scope representation) would only be able to remotely access electronic records that the public could access at the courthouse.

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 is to capture the full range of ways that attorneys may be working together and with others to provide representation to a party.

Under the rule, 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 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. This 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 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.

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. This rule requires a court to verify the identity of a person eligible to have remote access to electronic records under article 3 except for a party designee granted access under rule 2.518. This will allow the court to know that persons seeking access are who they say they are. There is an exception for party designees granted access under rule 2.518 because unlike remote access by other third parties under article 3, the party's designee rule allows the party to directly communicate with the court about who should have remote access to the party's electronic records. The parties themselves are able to control who gains access under the party's designee rule, which mitigates concerns about unknown third persons gaining unauthorized remote access.

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. A court could perform identity verification itself or, under subdivisions (d) and (e), rely on other entities to perform the verification. Subdivision (c) describes the responsibilities of users who seek remote access as follows: to provide necessary information for identity verification, to consent to conditions of access, and 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. This 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. As with the identity verification requirements, courts may participate in contracts for secure access and encryption services.

Rule 2.525. Searches; unauthorized access. This 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 authorized users are able to remotely access electronic 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 rule is to encourage courts to have the ability to generate audit trails that document 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 encourages the courts to provide limited audit trails to authorized users who are remotely accessing remote records under article 3. A limited audit trail would show the users who remotely accessed electronic records in a particular case but would not identify which specific electronic records were accessed. This limited view protects confidential information while still providing users with a tool to identify potential unauthorized remote access.

Rule 2.527. Additional conditions of access. This 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. This 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. This 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 to additional government entities 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 rule does not preclude government entities from gaining access to court records through articles 2 and 3, nor does it grant higher levels of access to court records than currently exists. Rather, as with the rules under article 3, it provides for remote access only to electronic 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. This rule largely mirrors rule 2.523 and describes the responsibilities of the court, authorized persons, and government entities for identity verification and user access. The 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. This rule largely mirrors rule 2.524 in requiring secure 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. This rule mirrors rule 2.526.

Rule 2.544. Additional conditions of access. This rule mirrors rule 2.527.

Rule 2.545. Termination of remote access. This rule mirrors rule 2.528.

Policy implications

ITAC anticipates that amendments to the rules will be necessary in the future. In particular, the committee expects the rules encouraging the use of audit trails—rules 2.526 and 2.543—to become mandatory. As circulated, the audit trail rules were mandatory, but the committee sought specific comments on whether the requirement would present a challenge and whether there were more feasible alternatives. The Joint Technology Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, joined by the Superior Court of Placer County, recommended that the audit trail requirement be nonmandatory. The Joint Technology Subcommittee commented, "The current mandatory language may result in a court being prohibited from providing any electronic access even with the ability to do so, if the court does not have the ability to provide the required audit trail." A goal of the rules proposal is to facilitate current use of remote access rather than inhibit it. Accordingly, ITAC agreed that the audit trail rules should be nonmandatory for now. However, ITAC recognized the importance of having the ability to audit and added an advisory committee comment that audit trails would become a requirement in the future. ITAC will circulate amendments in another rule cycle to seek feedback from the courts on potential dates by which the rules should be amended to be mandatory.

Comments

This rules proposal circulated for public comment from April 9 to June 8, 2018. Thirteen commenters responded to the invitation to comment. The following topics generated the most interest:

- Feasibility of providing remote access (rule 2.516);
- Allowing a party to designate users to remotely access the party's electronic records (rule 2.518);
- Allowing an undisclosed attorney to remotely access a party's electronic records (rule 2.519(c));

- Allowing a qualified person from a qualified legal services project to remotely access a party's electronic records (rule 2.522);
- Requiring courts to verify the identities of remote access users (rule 2.523);
- Audit trails documenting information about user access (rules 2.526 and 2.543); and
- Provisions for remote access by Department of Child Support Services and local child support agencies (rule 2.540).

The comments on these topics are discussed below. For all other comments, please see the chart of comments at pages 44–91.

Comments on rule 2.516. This rule requires the courts to provide remote access to users under article 3 if it is feasible to do so. The Joint Technology Subcommittee, joined by the Placer court, commented, "[A]s written it is unclear whether it is ITAC's intent that courts refrain from moving forward with *any* part of the remote access options until they can move forward with *all* of the options." (Italics added.) The commenters recommended additional clarification in the rule or in an advisory committee comment. ITAC did not intend article 3 to be an "all-or-none" proposition because it may not be feasible for a court to add all the users outlined in rule 2.515 at once. The committee added an advisory committee comment to clarify this.

The Joint Technology Subcommittee, joined by the Placer court, commented that rule 2.519(c), which governs remote access by attorneys who are not attorneys of record, presents a significant security risk. In response, the committee added "security resources" to the advisory committee comment to rule 2.516 as a consideration for feasibility. Thus, if it is not feasible to provide remote access to certain users because of insufficient security resources, providing such remote access would not be required.

Comments on rule 2.518. This rule governs remote access by a party's designee. ITAC sought specific comments on an 18-years-of-age cutoff that had been included in the rule as circulated, and sought specific comments on whether designee remote access should be limited to certain case types. The Superior Court of San Joaquin County commented that the age guidelines should match those applied to filings. The Superior Court of San Diego County noted that there should be an exception for emancipated minors and persons over 18 who are under conservatorship. The San Diego court's response, in particular, highlighted to the committee that an age cutoff at 18 was both underinclusive (e.g., excluding emancipated minors) and overinclusive (e.g., including adults under conservatorship). The legal capacity to agree to terms and conditions of a user agreement allowing use of a remote access system is the crux of who may designate. Accordingly, the committee struck the age cutoff from the rule and instead included an advisory committee comment that a party designating must have legal capacity to agree to the terms and conditions of a user agreement.

The Superior Court of Orange County commented that "the rule should be clear that it does not apply to juvenile justice and dependency case types." ITAC agreed because of the sensitivity of the information combined with the fact that counsel are typically involved and attorneys for minors and parents can gain access under other rules. In addition, the Joint Ad Hoc

Subcommittee on Remote Access raised a concern about pressure from gangs to designate gang members to obtain remote access to a person's criminal electronic records. Because of this issue and the sensitivity of the information in these three case types, ITAC agreed and limited the rule so that a party's designee cannot obtain remote access to such records.

The Joint Technology Subcommittee, joined by the Placer court, recommended adding "a statement making clear that the provision of this type of access is optional and not a mandate on the trial courts." ITAC intends the requirements of the rules in article 3 to be tempered by the feasibility condition in rule 2.516. Providing remote access to the users identified in article 3 is only mandatory if it is feasible. If it is not feasible for any reason—for example, lack of sufficient security resources, lack of technical capacity, or lack of financial resources—then it is not mandatory. Finally, the subcommittee recommended adding a rule "that the party must make an affirmative declaration that by granting their designee access to their case file, the trial court and the [j]udicial [b]ranch are absolved of any responsibility or liability for the release of information on their case that is inconsistent with this or other rules or laws." ITAC determined that such a rule is unnecessary because courts can include terms regarding liability in user agreements.

Comments on rule 2.519(c). Subdivision (c) governs remote access by a party's attorney who is not the attorney of record. The Joint Technology Subcommittee, joined by the Placer court, submitted several comments. First, the rule "presents a significant security risk." To address this, ITAC included "security resources" in the advisory committee comments on rule 2.516, which requires courts to provide remote access only if feasible. If providing remote access to attorneys who are not of record is not feasible, then courts are not required to do so. The Joint Technology Subcommittee also commented, "This section appears to contemplate giving access to case information that is otherwise not publicly available, to attorneys who have not formally appeared or associated in as counsel in the case, which might include documents that are not publicly viewable." Rule 2.519, as with the other remote access rules, limits what users can access remotely to the court records they would have been entitled to view at the courthouse. An attorney providing undisclosed representation who showed up at the courthouse would be limited to the same access as the public. Accordingly, the attorney could only remotely access court records that the public could view at the courthouse. The rule merely eliminates the step of the attorney having to go to the courthouse. ITAC added an advisory committee comment to provide clarification about the level of access an undisclosed attorney providing limited scope representation (as opposed to an attorney providing noticed limited scope representation) can gain through remote access.

The Joint Technology Subcommittee also commented that the attorney should be required to provide some kind of noticed representation, but ITAC disagreed. The challenge with limited scope representation in particular is that the attorney may be unknown to the court. Attorneys providing limited scope representation under chapter 3 of title 3 (the civil rules), are permitted to provide noticed representation or undisclosed representation. Requiring an attorney to file a notice of limited scope representation requires notice and service on all parties. (Cal. Rules of

Court, rule 3.36(h).) The requirement to provide noticed representation could add costs to a party who only requires assistance in the drafting of legal documents in his or her matter, or requires assistance with collateral matters. ITAC did not see a clear benefit to requiring noticed representation over the requirements of subdivision (c), which require an attorney who is not of record to "represent [] to the court in the remote access system that the attorney has obtained the party's consent to remotely access the party's electronic records." This provides a mechanism for the court to "know" about the attorney for remote access purposes without requiring a filed notice and service of the notice.

The Joint Technology Subcommittee also commented that there should be "a statement making clear that the provision of this type of access is optional and not a mandate on the trial courts." ITAC intends the requirements of the rules in article 3 to be tempered by the feasibility condition in rule 2.516. Providing remote access to the users identified in article 3 is mandatory only if it is feasible. If it is not feasible for any reason—for example, lack of sufficient security resources, lack of technical capacity, or lack of financial resources—then it is not mandatory.

Comments on rule 2.522. This rule governs remote access by a person working for a qualified legal services project. The Joint Technology Subcommittee, joined by the Placer court, submitted several comments:

- If rule 2.518 (remote access by a party designee) is adopted, rule 5.522 may be unnecessary. ITAC disagreed because although rule 2.518 provides an alternative, it is not sufficient for parties who do not have the ability to gain access to a system to provide designees (e.g., lack computer or Internet access or lack the skills to access). Qualified legal services projects serve indigent populations that may not have access to the resources that would enable them to designate another under rule 2.518.
- If rule 2.519 (remote access by an attorney) is adopted, rule 5.522 again may be unnecessary. ITAC disagreed because rule 2.519 governs attorney remote access only and a person working in a qualified legal organization may not be an attorney (e.g., a paralegal or intern).
- It was unclear how the designation and certification process would work and how records of a party's consent would be documented. ITAC added an advisory committee comment clarifying that the rule does not prescribe particular methods and that courts and qualified legal services projects have flexibility to determine the methods that work for them.
- There may be more technical challenges with implementing rule 2.522 than the other rules. ITAC agreed that it could present a technical challenge, but as with remote access to other users under article 3, the rule is tempered by the feasibility provision of rule 2.516. If it is technically not feasible at the time to provide remote access to users under rule 2.522 then courts would not need to provide remote access to those users.

Comments on rules 2.526 and 2.540. These rules govern audit trails and, as initially proposed, required courts to have the ability to generate audit trails and provide users with the ability to view limited audit trails. The Orange court commented that it was unclear on the purpose of the limited audit trails. ITAC added an advisory committee comment explaining that an audit trail is

meant to be a tool for the court and the users to identify potential issues or misuse of remote access.

In the invitation to comment, ITAC sought specific comments on the challenges of the proposed rule and whether there were more feasible alternatives. The San Joaquin court commented that generating ad hoc reports would be new and require staff, time, and ongoing costs to implement. The court proposed requiring the users to provide good cause before the court would need to provide a report to the user. ITAC agreed that such a provision could reduce the number of reports that would need to be generated, but was unclear what good cause to generate a report would be. ITAC instead followed a suggestion from the Joint Technology Subcommittee, joined by the Placer court, to not make the rule mandatory. The subcommittee commented that "[t]he current mandatory language may result in a court being prohibited from providing any electronic access even with the ability to do so, if the court does not have the ability to provide the required audit trail." A goal of the rules proposal is to facilitate current use of remote access rather than inhibit it. Accordingly, ITAC agreed and recommended making the audit trail rules nonmandatory. However, ITAC recognizes the importance of auditability and added an advisory committee comment that the committee will consider recommending amendments to make the rule mandatory in the future through an invitation to comment.

Comments on rule 2.540. This rule governs remote access by government entities, and subdivision (b) in particular identifies each entity and to what case types authorized users can gain remote access. There is no requirement that the court provide remote access to government entity users even if feasible. Both the Child Support Directors Association of California and the California Department of Child Support Services (CDSS) suggested that the rule be mandatory. ITAC disagreed because the rule was designed to be permissive so the courts can exercise discretion to meet their business needs and capacity. Government entities may still avail themselves of the article 3 rules when they are parties to litigation because their legal staff can gain access under rules 2.519 and 2.520. CDSS also commented that "local child support agency" should be changed to "local child support agencies" so that an agency in one county could potentially remotely access the electronic records of a court situated in another county (rather than a court only dealing with the agency in the county where the court was located). ITAC agreed that a child support agency in one county should not be precluded from obtaining remote access to electronic records of a court in another county. Instead of altering the rule, ITAC added a clarifying advisory committee comment using local child support agencies as an illustrative example. The rules are not written to lock the courts into county boundaries and only allow remote access by government entities in the county where the court is situated and the addition of this advisory committee comment makes that clear.

Alternatives considered

The committee considered making no changes to the rules, but that was not desirable because courts would need to continue providing remote access on a piecemeal, ad hoc basis with no clear authority. Accordingly, ITAC made the creation of these rules a priority on its annual agenda, which was approved by the Judicial Council Technology Committee.

Fiscal and Operational Impacts

Implementation requirements. ITAC solicited specific comments on what the implementation requirements would be on the courts and received the following responses:

- Superior Court of Orange County: "This is dependent upon whether or not courts have existing applications that allow remote access."
- Superior Court of San Diego County:

  [O]ur court has identified the following issues:

  1. Our court needs to understand the business and technical requirements of the implementation. For example, we need to understand the audience that will need access. Will each group of the audience have the same or unique access requirements. For example, do we need to restrict access from specific networks.
  2. Audit and security requirements. Our court needs to be able to generate reports on who, where, when and how long the application was used by remote users.
  3. Testing. Our court needs to be able to identify the testing requirements, especially if the level of access for each audience is different. There needs to be participation from the justice partners (i.e. government agencies).
  4. Training. Tip sheets will need to be prepared for the users.
  5. Legal. There needs to be some kind of MOU with the remote user/justice partner.

- Superior Court of San Joaquin County:

  There will be a level of training necessary to implement a process such as this but it is not possible to specify the exact amount of time necessary to execute all processes. For example, in our court, time and cost must be invested to:

  1. Set up, testing, training, and implementation of an additional program because our current case management system is not set up to handle the identity and audit trails required in the amendment.
  2. Create and train staff assigned to monitor and manage the additional program for questions from the public, account set-up, password management, and any other situation arising from user end regarding remote records access.

Cost savings. ITAC requested specific comments on whether the proposal would provide cost savings and received the following responses:

- Superior Court of Orange County: "No, the administration of managing remote access and unique credentials under these rules will result in ongoing-additional costs. Maintenance of restricted and/or limited term access to remote information will be necessary and require someone to control. Managing user ID's and password control should also be considered."

- Superior Court of San Diego: "No."
- Superior Court of San Joaquin County:

> In the long run there may be some savings due to less walk-in customers at local courthouses[;] however the costs associated to comply with all levels of identity verification and access will create additional ongoing costs for the court. There will also be additional ongoing costs for the addition of staff to monitor, manage, and update all changes required to comply with the identity verification and audit trail requirements. We cannot quantify the savings as we cannot predict the amount of public who will have the means to access court records remotely nor do we know the exact amount of employees needed to maintain these requirements.

Operational impacts. The Joint Technology Subcommittee, joined by the Placer court, noted the following impacts to court operations:

- "The proposal will create the need for new and/or revised procedures and alterations to case management systems. A number of proposed revisions in the proposal would present a workload burden on the trial courts, create new access categories that will result in significant one-time or ongoing costs, and complicate the access rules in a way that may result in confusion for the public."
- "Increases court staff workload—Court staff would be required to verify the identity of individual(s) designated by the party to access their case."
- "Security—The proposed changes could result in security complications and allow for data intrusion."

Attachments and Links

1. Cal. Rules of Court, rules 2.500–2.503, 2.515–2.528, and 2.540–2.545, at pages 17–43
2. Chart of comments, at pages 44-92
3. Link A: Cal. Rules of Court, title 2 (the existing public access rules are rules 2.250–2.261), *http://www.courts.ca.gov/cms/rules/index.cfm?title=two*

Rules 2.500–2.503 of the California Rules of Court are amended and rules 2.515–2.528 and 2.540–2.545 are adopted effective January 1, 2019, to read:

Chapter 2. ~~Public~~ Access to Electronic Trial Court Records

Article 1. General Provisions

Rule 2.500. Statement of purpose

(a) Intent

The rules in this chapter are intended to provide the public, parties, parties' attorneys, legal organizations, court-appointed persons, and government entities with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests.

(b) Benefits of electronic access

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing ~~public~~ access to trial court records that are maintained in electronic form may save the courts, ~~and~~ the public, parties, parties' attorneys, legal organizations, court-appointed persons, and government entities time, money, and effort and encourage courts to be more efficient in their operations. Improved access to trial court records may also foster in the public a more comprehensive understanding of the trial court system.

(c) No creation of rights

The rules in this chapter are not intended to give the public, parties, parties' attorneys, legal organizations, court-appointed persons, and government entities a right of access to any record that they are not otherwise legally entitled to access. ~~The rules do not create any right of access to records that are sealed by court order or confidential as a matter of law.~~

Advisory Committee Comment

The rules in this chapter acknowledge the benefits that electronic ~~court~~ records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic ~~court~~ records. The proposed rules take into account the limited resources currently available in the trial courts. It is contemplated that the rules may be modified to provide greater electronic access as ~~the~~ courts' technical capabilities improve and ~~with the~~ knowledge is gained from the experience of ~~the courts in~~ providing electronic access under these rules.

Rule 2.501. Application, ~~and~~ scope, and information to the public

(a) Application and scope

The rules in this chapter apply only to trial court records as defined in rule 2.502(3). They do not apply to statutorily mandated reporting between or within government entities, or any other documents or materials that are not court records.

(b) ~~Access by parties and attorneys~~ Information to the public

~~The rules in this chapter apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.~~

The website for each trial court must include a link to information that will inform the public of who may access their electronic records under the rules in this chapter and under what conditions they may do so. This information will be posted publicly on the California Courts website at *www.courts.ca.gov*. Each trial court may post additional information, in plain language, as necessary to inform the public about the level of access that the particular trial court is providing.

Advisory Committee Comment

The rules on remote access do not apply beyond court records to other types of documents, information, or data. Rule 2.502 defines a court record as "any document, paper, or exhibit filed in an action or proceeding; any order or judgment of the court; and any item listed in Government Code section 68151(a)—excluding any reporter's transcript for which the reporter is entitled to receive a fee for any copy—that is maintained by the court in the ordinary course of the judicial process. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel, statutorily mandated reporting between government entities, judicial administrative records, court case information, or compilations of data drawn from court records where the compilations are not themselves contained in a court record." (Cal. Rules of Court, rule 2.502(3).) Thus, courts generate and maintain many types of information that are not court records and to which access may be restricted by law. Such information is not remotely accessible as court records, even to parties and their attorneys. If parties and their attorneys are entitled to access to any such additional information, separate and independent grounds for that access must exist.

Rule 2.502. Definitions

As used in this chapter, the following definitions apply:

(1) "Authorized person" means a person authorized by a legal organization, qualified legal services project, or government entity to access electronic records.

(2) "Brief legal services" means 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.

~~(1)~~(3) "Court record" is any document, paper, or exhibit filed ~~by the parties to~~ in an action or proceeding; any order or judgment of the court; and any item listed in Government Code section 68151(a)~~,~~ ~~—~~excluding any reporter's transcript for which the reporter is entitled to receive a fee for any copy~~—~~that is maintained by the court in the ordinary course of the judicial process. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel, statutorily mandated reporting between or within government entities, judicial administrative records, court case information, or compilations of data drawn from court records where the compilations are not themselves contained in a court record.

(4) "Court case information" refers to data that is stored in a court's case management system or case histories. This data supports the court's management or tracking of the action and is not part of the official court record for the case or cases.

~~(4)~~(5) "Electronic access" means ~~computer~~ access by electronic means to court records available ~~to the public~~ through ~~both~~ public terminals at the courthouse and remotely, unless otherwise specified in the rules in this chapter.

~~(2)~~(6) "Electronic record" is a ~~computerized~~ court record~~, regardless of the manner in which it has been computerized~~ that requires the use of an electronic device to access. The term includes both a ~~document~~ record that has been filed electronically and an electronic copy or version of a record that was filed in paper form. The term does not include a court record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.

(7) "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. Government entity also means a federally recognized Indian tribe or a reservation, department, subdivision, or court of a federally recognized Indian tribe.

(8) "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.

(9) "Party" means a plaintiff, defendant, cross-complainant, cross-defendant, petitioner, respondent, intervenor, objector, or anyone expressly defined by statute as a party in a court case.

(10) "Person" means a natural human being.

~~(3)~~(11) "The public" means ~~an individual~~ a person, a group, or an entity, including print or electronic media, ~~or the representative of an individual, a group, or an entity~~ regardless of any legal or other interest in a particular court record.

(12) "Qualified legal services project" has the same meaning under the rules of this chapter as in Business and Professions Code section 6213(a).

(13) "Remote access" means electronic access from a location other than a public terminal at the courthouse.

(14) "User" means an individual person, a group, or an entity that accesses electronic records.

Article 2. Public Access

Rule 2.503. ~~Public access~~ Application and scope

(a) General right of access by the public

(1) All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except those that are sealed by court order or made confidential by law.

(2) The rules in this article apply only to access to electronic records by the public.

(b) Electronic access required to extent feasible

A court that maintains the following records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so:

(1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and indexes in all cases; and

(2) All court records in civil cases, except those listed in (c)(1)–~~(9)~~(11).

(c) Courthouse electronic access only

A court that maintains the following records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may not provide public remote ~~electronic~~ access to these records ~~only to the records governed by (b)~~:

(1) Records in a proceeding under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;

(2) Records in a juvenile court proceeding;

(3) Records in a guardianship or conservatorship proceeding;

(4) Records in a mental health proceeding;

(5) Records in a criminal proceeding;

(6) Records in proceedings to compromise the claims of a minor or a person with a disability;

(7)~~(6)~~ Records in a civil harassment proceeding under Code of Civil Procedure section 527.6;

(8)~~(7)~~ Records in a workplace violence prevention proceeding under Code of Civil Procedure section 527.8;

(9)~~(8)~~ Records in a private postsecondary school violence prevention proceeding under Code of Civil Procedure section 527.85;

(10)~~(9)~~ Records in an elder or dependent adult abuse prevention proceeding under Welfare and Institutions Code section 15657.03; and

~~(10) Records in proceedings to compromise the claims of a minor or a person with a disability.~~

(11) Records in a gun violence prevention proceeding under Penal Code sections 18100–18205.

(d) * * *

(e) Remote ~~electronic~~ access allowed in extraordinary criminal cases

Notwithstanding (c)(5), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (e)(1), to permit remote ~~electronic~~ access by the public to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote ~~electronic~~ access is provided.

(1) In exercising discretion under (e), the judge should consider the relevant factors, such as:

(A) * * *

(B) The benefits to and burdens on the parties in allowing remote ~~electronic~~ access, including possible impacts on jury selection; and

(C) * * *

(2) The court should, to the extent feasible, redact the following information from records to which it allows remote access under (e): driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote ~~electronic~~ access. No juror names or other juror identifying information may be provided by remote ~~electronic~~ access. This subdivision does not apply to any document in the original court file; it applies only to documents that are available by remote ~~electronic~~ access.

(3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote ~~electronic~~ access under this rule. Notice to the public may be accomplished by posting notice on the

court's ~~Web site~~ website. Any person may file comments with the court for consideration, but no hearing is required.

(4) The court's order permitting remote ~~electronic~~ access must specify which court records will be available by remote ~~electronic~~ access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's ~~Web site~~ website and a copy sent to the Judicial Council.

(f)–(i) *** * ***

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, and indexes) in specified types of cases (notably criminal, juvenile, and family court matters) from public remote ~~electronic~~ access. The committee recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committee also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding judge makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

Subdivisions (f) and (g). These subdivisions limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote ~~electronic~~ access in extraordinary criminal cases to~~:~~ Criminal Justice Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.

Rules 2.504–2.507 * * *

Article 3. Remote Access by a Party, Party's Designee, Party's Attorney, Court-Appointed Person, or Authorized Person Working in a Legal Organization or Qualified Legal Services Project

Rule 2.515. Application and scope

(a) No limitation on access to electronic records available under article 2

The rules in this article do not limit remote access to electronic records available under article 2. These rules govern access to electronic records where remote access by the public is not allowed.

(b) Who may access

The rules in this article apply to remote access to electronic records by:

(1) A person who is a party;

(2) A designee of a person who is a party;

(3) A party's attorney;

(4) An authorized person working in the same legal organization as a party's attorney;

(5) An authorized person working in a qualified legal services project providing brief legal services; and

(6) A court-appointed person.

Advisory Committee Comment

Article 2 allows remote access in most civil cases, and the rules in article 3 are not intended to limit that access. Rather, the article 3 rules allow broader remote access—by parties, parties' designees, parties' attorneys, authorized persons working in legal organizations, authorized persons working in a qualified legal services project providing brief services, and court-appointed persons—to those electronic records where remote access by the public is not allowed.

Under the rules in article 3, a party, a party's attorney, an authorized person working in the same legal organization as a party's attorney, or a person appointed by the court in the proceeding basically has the same level of access to electronic records remotely that he or she would have if he or she were to seek to inspect the records in person at the courthouse. Thus, if he or she is legally entitled to inspect certain records at the courthouse, that person could view the same records remotely; on the other hand, if he or she is restricted from inspecting certain court records at the courthouse (e.g., because the records are confidential or sealed), that person would not be permitted to view the records remotely. In some types of cases, such as unlimited civil cases, the access available to parties and their attorneys is generally similar to the public's but in other types of cases, such as juvenile cases, it is much more extensive (see Cal. Rules of Court, rule 5.552).

For authorized persons working in a qualified legal services program, the rule contemplates services offered in high-volume environments on an ad hoc basis. There are some limitations on access under the rule for qualified legal services projects. When an attorney at a qualified legal services project becomes a party's attorney and offers services beyond the scope contemplated under this rule, the access rules for a party's attorney would apply.

Rule 2.516. Remote access to extent feasible

To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515, subject to the conditions and limitations stated in this article and otherwise provided by law.

Advisory Committee Comment

This rule takes into account the limited resources currently available in some trial courts. Many courts may not have the financial means, security resources, or technical capabilities necessary to provide the full range of remote access to electronic records authorized by this article. When it is more feasible and courts have had more experience with remote access, these rules may be amended to further expand remote access.

This rule is not intended to prevent a court from moving forward with the limited remote access options outlined in this rule as such access becomes feasible. For example, if it were only feasible for a court to provide remote access to parties who are persons, it could proceed to provide remote access to those users only.

Rule 2.517. Remote access by a party

(a) Remote access generally permitted

A person may have remote access to electronic records in actions or proceedings in which that person is a party.

(b) Level of remote access

(1) In any action or proceeding, a party may be provided remote access to the same electronic records that he or she would be legally entitled to inspect at the courthouse.

(2) This rule does not limit remote access to electronic records available under article 2.

(3) This rule applies only to electronic records. A person is not entitled under these rules to remote access to documents, information, data, or other materials created or maintained by the courts that are not electronic records.

Advisory Committee Comment

Because this rule permits remote access only by a party who is a person (defined under rule 2.501 as a natural human being), remote access would not apply to parties that are organizations, which would need to gain remote access under the party's attorney rule or, for certain government entities with respect to specified electronic records, the rules in article 4.

A party who is a person would need to have the legal capacity to agree to the terms and conditions of a court's remote access user agreement before using a system of remote access. The court could deny access or require additional information if the court knew the person seeking access lacked legal capacity or appeared to lack capacity—for example, if identity verification revealed the person seeking access was a minor.

Rule 2.518. Remote access by a party's designee

(a) Remote access generally permitted

A person who is a party in an action or proceeding may designate other persons to have remote access to electronic records in that action or proceeding.

(b) Level of remote access

(1) Except for criminal electronic records, juvenile justice electronic records, and child welfare electronic records, a party's designee may have 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. A party's designee is not permitted remote access to criminal electronic records, juvenile justice electronic records, and child welfare electronic records.

(2) A party may limit the access to be afforded a designee to specific cases.

(3) A party may limit the access to be afforded a designee to a specific period of time.

(4) A party may modify or revoke a designee's level of access at any time.

(c) Terms of access

(1) A party's designee may access electronic records only for the purpose of assisting the party or the party's attorney in the action or proceeding.

(2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.

(3) All laws governing confidentiality and disclosure of court records apply to the records obtained under this article.

(4) Party designees must comply with any other terms of remote access required by the court.

(5) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Advisory Committee Comment

A party must be a natural human being with the legal capacity to agree to the terms and conditions of a user agreement with the court to authorize designees for remote access. Under rule 2.501, for purposes of the rules, "person" refers to natural human beings Accordingly, the party's designee rule would not apply to parties that are organizations, which would need to gain remote access under the party's attorney rule or, for certain government entities with respect to specified electronic records, under the rules in article 4.

Rule 2.519. Remote access by a party's attorney

(a) Remote access generally permitted

(1) A party's attorney may have remote access to electronic records in the party's actions or proceedings under this rule or under rule 2.518. If a party's attorney gains remote access under rule 2.518, the requirements of rule 2.519 do not apply.

(2) If a court notifies an attorney of the court's intention to appoint the attorney to represent a party in a criminal, juvenile justice, child welfare, family law, or probate proceeding, the court may grant remote access to that attorney before an order of appointment is issued by the court.

(b) Level of remote access

A party's attorney may be provided remote access to the same electronic records in the party's actions or proceedings that the party's attorney would be legally entitled to view at the courthouse.

(c) Terms of remote access applicable to an attorney who is not the attorney of record

An attorney who represents a party, but who is not the party's attorney of record in the party's actions or proceedings, may remotely access the party's electronic records, provided that the attorney:

(1) Obtains the party's consent to remotely access the party's electronic records; and

(2) Represents to the court in the remote access system that he or she has obtained the party's consent to remotely access the party's electronic records.

(d) Terms of remote access applicable to all attorneys

(1) A party's attorney may remotely access the electronic records only for the purpose of assisting the party with the party's court matter.

(2) A party's attorney may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.

(3) A party's attorney must comply with any other terms of remote access required by the court.

(4) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Advisory Committee Comment

Subdivision (c). An attorney of record will be known to the court for purposes of remote access. However, a person may engage an attorney other than the attorney of record for assistance in an action or proceeding in which the person is a party. For example, a party may engage an attorney to (1) prepare legal documents but not appear in the party's action (e.g., provide limited-scope representation); (2) assist the party with dismissal or sealing of a criminal record when the attorney did not represent the party in the criminal proceeding; or (3) represent the party in an appellate matter when the attorney did not represent the party in the trial court. Subdivision (c) provides a mechanism for an attorney not of record to be known to the court for purposes of remote access.

Because the level of remote access is limited to the same court records that an attorney would be entitled to access if he or she were to appear at the courthouse, an attorney providing undisclosed representation would only be able to remotely access electronic records that the public could access at the courthouse. The rule essentially removes the step of the attorney having to go to the courthouse.

Rule 2.520. Remote access by persons working in the same legal organization as a party's attorney

(a) Application and scope

(1) This rule applies when a party's attorney is assisted by others working in the same legal organization.

(2) "Working in the same legal organization" under this rule includes partners, associates, employees, volunteers, and contractors.

(3) This rule does not apply when a person working in the same legal organization as a party's attorney gains remote access to records as a party's designee under rule 2.518.

(b) Designation and certification

(1) A party's attorney may designate that other persons working in the same legal organization as the party's attorney have remote access.

(2) A party's attorney must certify that the other persons authorized for remote access are working in the same legal organization as the party's attorney and are assisting the party's attorney in the action or proceeding.

(c) Level of remote access

(1) Persons designated by a party's attorney under (b) must be provided access to the same electronic records as the party.

(2) Notwithstanding (b), when a court designates a legal organization to represent parties in criminal, juvenile, family, or probate proceedings, the court may grant remote access to a person working in the organization who assigns cases to attorneys working in that legal organization.

(d) Terms of remote access

(1) Persons working in a legal organization may remotely access electronic records only for purposes of assigning or assisting a party's attorney.

(2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.

(3) All laws governing confidentiality and disclosure of court records apply to the records obtained under this article.

(4) Persons working in a legal organization must comply with any other terms of remote access required by the court.

(5) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Advisory Committee Comment

Subdivision (b). The designation and certification outlined in this subdivision need only be done once and can be done at the time the attorney establishes his or her remote access account with the court.

Rule 2.521. Remote access by a court-appointed person

(a) Remote access generally permitted

(1) A court may grant a court-appointed person remote access to electronic records in any action or proceeding in which the person has been appointed by the court.

(2) Court-appointed persons include an attorney appointed to represent a minor child under Family Code section 3150; a Court Appointed Special Advocate volunteer in a juvenile proceeding; an attorney appointed under Probate Code section 1470, 1471, or 1474; an investigator appointed under Probate Code section 1454; a probate referee designated under Probate Code section 8920; a fiduciary, as defined in Probate Code section 39; an attorney appointed under Welfare and Institutions Code section 5365; or a guardian ad litem appointed under Code of Civil Procedure section 372 or Probate Code section 1003.

(b) Level of remote access

A court-appointed person may be provided with the same level of remote access to electronic records as the court-appointed person would be legally entitled to if he or she were to appear at the courthouse to inspect the court records.

(c) Terms of remote access

(1) A court-appointed person may remotely access electronic records only for purposes of fulfilling the responsibilities for which he or she was appointed.

(2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.

(3) All laws governing confidentiality and disclosure of court records apply to the records obtained under this article.

(4) A court-appointed person must comply with any other terms of remote access required by the court.

(5) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Rule 2.522. Remote access by persons working in a qualified legal services project providing brief legal services

(a) Application and scope

(1) This rule applies to qualified legal services projects as defined in Business and Professions Code section 6213(a).

(2) "Working in a qualified legal services project" under this rule includes attorneys, employees, and volunteers.

(3) This rule does not apply to a person working in or otherwise associated with a qualified legal services project who gains remote access to court records as a party's designee under rule 2.518.

(b) Designation and certification

(1) A qualified legal services project may designate persons working in the qualified legal services project who provide brief legal services, as defined in rule 2.501, to have remote access.

(2) The qualified legal services project must certify that the authorized persons work in their organization.

(c) Level of remote access

Authorized persons may be provided remote access to the same electronic records that the authorized person would be legally entitled to inspect at the courthouse.

(d) Terms of remote access

(1) Qualified legal services projects must obtain the party's consent to remotely access the party's electronic records.

(2) Authorized persons must represent to the court in the remote access system that the qualified legal services project has obtained the party's consent to remotely access the party's electronic records.

(3) Qualified legal services projects providing services under this rule may remotely access electronic records only to provide brief legal services.

(4) Any distribution for sale of electronic records obtained under the rules in this article is strictly prohibited.

(5) All laws governing confidentiality and disclosure of court records apply to electronic records obtained under this article.

(6) Qualified legal services projects must comply with any other terms of remote access required by the court.

(7) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Advisory Committee Comment

The rule does not prescribe any particular method for capturing the designation and certification of persons working in a qualified legal services project. Courts and qualified legal services projects have flexibility to determine what method would work for both entities. For example, the information could be captured in a remote access system if an organizational-level account could be established, or the information could be captured in a written agreement between the court and the qualified legal services project.

The rule does not prescribe any particular method for a qualified legal services project to document the consent it obtained to access a person's electronic records. Qualified legal services projects have flexibility to adapt the requirement to their regular processes for making records. For example, the qualified legal services project could obtain a signed consent form for its records or could obtain consent over the phone and make an entry to that effect in its records, or the court and the qualified legal services project could enter into an agreement to describe how consent will be obtained and recorded.

Rule 2.523. Identity verification, identity management, and user access

(a) Identity verification required

Except for remote access provided to a party's designee under rule 2.518, before allowing a person who is eligible under the rules in article 3 to have remote access to electronic records, a court must verify the identity of the person seeking access.

(b) Responsibilities of the court

A court that allows persons eligible under the rules in article 3 to have remote access to electronic records must have an identity verification method that verifies the identity of, and provides a unique credential to, each person who is permitted remote access to the electronic records. The court may authorize remote access by a person only if that person's identity has been verified, the person accesses records

using the credential provided to that individual, and the person complies with the terms and conditions of access, as prescribed by the court.

(c) Responsibilities of persons accessing records

A person eligible to be given remote access to electronic records under the rules in article 3 may be given such access only if that person:

(1) Provides the court with all information it directs in order to identify the person to be a user;

(2) Consents to all conditions for remote access required under article 3 and by the court; and

(3) Is authorized by the court to have remote access to electronic records.

(d) Responsibilities of the legal organizations or qualified legal services projects

(1) If a person is accessing electronic records on behalf of a legal organization or qualified legal services project, the organization or project must approve granting access to that person, verify the person's identity, and provide the court with all the information it directs in order to authorize that person to have access to electronic records.

(2) If a person accessing electronic records on behalf of a legal organization or qualified legal services project leaves his or her position or for any other reason is no longer entitled to access, the organization or project must immediately notify the court so that it can terminate the person's access.

(e) Vendor contracts, statewide master agreements, and identity and access management systems

A court may enter into a contract with a vendor to provide identity verification, identity management, or user access services. Alternatively, courts may use a statewide identity verification, identity management, or access management system, if available, or a statewide master agreement for such systems, if available.

Advisory Committee Comment

Subdivisions (a) and (d). A court may verify user identities under (a) by obtaining a representation from a legal organization or qualified legal services project that the legal organization or qualified legal services project has verified the user identities under (d). No additional verification steps are required on the part of the court.

Rule 2.524. Security of confidential information

(a) Secure access and encryption required

If any information in an electronic record that is confidential by law or sealed by court order may lawfully be provided remotely to a person or organization described in rule 2.515, any remote access to the confidential information must be provided through a secure platform and any electronic transmission of the information must be encrypted.

(b) Vendor contracts and statewide master agreements

A court may enter into a contract with a vendor to provide secure access and encryption services. Alternatively, if a statewide master agreement is available for secure access and encryption services, courts may use that master agreement.

Advisory Committee Comment

This rule describes security and encryption requirements; levels of access are provided for in rules 2.517–2.522.

Rule 2.525. Searches; unauthorized access

(a) Searches by case number or caption

A user authorized under this article to remotely access a party's electronic records may search for the records by case number or case caption.

(b) Access level

A court providing remote access to electronic records under this article must ensure that authorized users are able to access the electronic records only at the access levels provided in this article.

(c) Unauthorized access

If a user gains access to an electronic record that he or she is not authorized to access under this article, the user must:

(1) Report the unauthorized access to the court as directed by the court for that purpose;

(2) Destroy all copies, in any form, of the record; and

(3) Delete from his or her web browser history all information that identifies the record.

Rule 2.526. Audit trails

(a) Ability to generate audit trails

The court should have the ability to generate an audit trail that contains one or more of the following elements: what electronic record was remotely accessed, when it was remotely accessed, who remotely accessed it, and under whose authority the user gained access.

(b) Limited audit trails available to authorized users

(1) A court providing remote access to electronic records under this article should make limited audit trails available to authorized users under this article.

(2) A limited audit trail should identify the user who remotely accessed electronic records in a particular case, but must not identify which specific electronic records were accessed.

Advisory Committee Comment

The audit trail is a tool to assist the courts and users in identifying and investigating any potential issues or misuse of remote access. The user's view of the audit trail is limited to protect sensitive information.

To facilitate the use of existing remote access systems, rule 2.526 is currently not mandatory, but may be amended to be mandatory in the future.

Rule 2.527. Additional conditions of access

To the extent consistent with these rules and other applicable law, a court must impose reasonable conditions on remote access to preserve the integrity of its records, prevent the unauthorized use of information, and limit possible legal liability. The court may choose

to require each user to submit a signed, written agreement enumerating those conditions before it permits that user to remotely access electronic records. The agreements may define the terms of access, provide for compliance audits, specify the scope of liability, and provide for sanctions for misuse up to and including termination of remote access.

Rule 2.528. Termination of remote access

(a) Remote access is a privilege

Remote access to electronic records under this article is a privilege and not a right.

(b) Termination by court

A court that provides remote access may, at any time and for any reason, terminate the permission granted to any person eligible under the rules in article 3 to remotely access electronic records.

Article 4. Remote Access by Government Entities

Rule 2.540. Application and scope

(a) Applicability to government entities

The rules in this article provide for remote access to electronic records by government entities described in (b). The access allowed under these rules is in addition to any access these entities or authorized persons working for such entities may have under the rules in articles 2 and 3.

(b) Level of remote access

(1) A court may provide authorized persons from government entities with remote access to electronic records as follows:

(A) Office of the Attorney General: criminal electronic records and juvenile justice electronic records.

(B) California Department of Child Support Services: family electronic records, child welfare electronic records, and parentage electronic records.

(C) Office of a district attorney: criminal electronic records and juvenile justice electronic records.

(D) Office of a public defender: criminal electronic records and juvenile justice electronic records.

(E) Office of a county counsel: criminal electronic records, mental health electronic records, child welfare electronic records, and probate electronic records.

(F) Office of a city attorney: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.

(G) County department of probation: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.

(H) County sheriff's department: criminal electronic records and juvenile justice electronic records.

(I) Local police department: criminal electronic records and juvenile justice electronic records.

(J) Local child support agency: family electronic records, child welfare electronic records, and parentage electronic records.

(K) County child welfare agency: child welfare electronic records.

(L) County public guardian: criminal electronic records, mental health electronic records, and probate electronic records.

(M) County agency designated by the board of supervisors to provide conservatorship investigation under chapter 3 of the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5350–5372): criminal electronic records, mental health electronic records, and probate electronic records.

(N) Federally recognized Indian tribe (including any reservation, department, subdivision, or court of the tribe) with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.

(O) For good cause, a court may grant remote access to electronic records in particular case types to government entities beyond those listed in

(b)(1)(A)–(N). For purposes of this rule, "good cause" means that the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.

(P) All other remote access for government entities is governed by articles 2 and 3.

(2) Subject to (b)(1), the court may provide a government entity with the same level of remote access to electronic records as the government entity would be legally entitled to if a person working for the government entity were to appear at the courthouse to inspect court records in that case type. If a court record is confidential by law or sealed by court order and a person working for the government entity would not be legally entitled to inspect the court record at the courthouse, the court may not provide the government entity with remote access to the confidential or sealed electronic record.

(3) This rule applies only to electronic records. A government entity is not entitled under these rules to remote access to any documents, information, data, or other types of materials created or maintained by the courts that are not electronic records.

(c) Terms of remote access

(1) Government entities may remotely access electronic records only to perform official duties and for legitimate governmental purposes.

(2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.

(3) All laws governing confidentiality and disclosure of court records apply to electronic records obtained under this article.

(4) Government entities must comply with any other terms of remote access required by the court.

(5) Failure to comply with these requirements may result in the imposition of sanctions, including termination of access.

Advisory Committee Comment

The rule does not restrict courts to providing remote access only to local government entities in the same county in which the court is situated. For example, a court in one county could allow remote access to electronic records by a local child support agency in a different county.

Subdivision (b)(3). As to the applicability of the rules on remote access only to electronic records, see the advisory committee comment to rule 2.501.

Rule 2.541. Identity verification, identity management, and user access

(a) Identity verification required

Before allowing a person or entity eligible under the rules in article 4 to have remote access to electronic records, a court must verify the identity of the person seeking access.

(b) Responsibilities of the courts

A court that allows persons eligible under the rules in article 4 to have remote access to electronic records must have an identity verification method that verifies the identity of, and provides a unique credential to, each person who is permitted remote access to the electronic records. The court may authorize remote access by a person only if that person's identity has been verified, the person accesses records using the name and password provided to that individual, and the person complies with the terms and conditions of access, as prescribed by the court.

(c) Responsibilities of persons accessing records

A person eligible to remotely access electronic records under the rules in article 4 may be given such access only if that person:

(1) Provides the court with all of the information it needs to identify the person to be a user;

(2) Consents to all conditions for remote access required by article 4 and the court; and

(3) Is authorized by the court to have remote access to electronic records.

(d) Responsibilities of government entities

(1) If a person is accessing electronic records on behalf of a government entity, the government entity must approve granting access to that person, verify the person's identity, and provide the court with all the information it needs to authorize that person to have access to electronic records.

(2) If a person accessing electronic records on behalf of a government entity leaves his or her position or for any other reason is no longer entitled to access, the government entity must immediately notify the court so that the court can terminate the person's access.

(e) Vendor contracts, statewide master agreements, and identity and access management systems

A court may enter into a contract with a vendor to provide identity verification, identity management, or user access services. Alternatively, courts may use a statewide identity verification, identity management, or access management system, if available, or a statewide master agreement for such systems, if available.

Rule 2.542. Security of confidential information

(a) Secure access and encryption required

If any information in an electronic record that is confidential by law or sealed by court order may lawfully be provided remotely to a government entity, any remote access to the confidential information must be provided through a secure platform, and any electronic transmission of the information must be encrypted.

(b) Vendor contracts and statewide master agreements

A court may enter into a contract with a vendor to provide secure access and encryption services. Alternatively, if a statewide master agreement is available for secure access and encryption services, courts may use that master agreement.

Rule 2.543. Audit trails

(a) Ability to generate audit trails

The court should have the ability to generate an audit trail that contains one or more of the following elements: what electronic record was remotely accessed, when it was accessed, who accessed it, and under whose authority the user gained access.

(b) Audit trails available to government entity

(1) A court providing remote access to electronic records under this article should make limited audit trails available to authorized users of the government entity.

(2) A limited audit trail should identify the user who remotely accessed electronic records in a particular case, but must not identify which specific electronic records were accessed.

Advisory Committee Comment

The audit trail is a tool to assist the courts and users in identifying and investigating any potential issues or misuse of remote access. The user's view of the audit trail is limited to protect sensitive information.

To facilitate the use of existing remote access systems, rule 2.526 is currently not mandatory, but may be amended to be mandatory in the future.

Rule 2.544. Additional conditions of access

To the extent consistent with these rules and other applicable law, a court must impose reasonable conditions on remote access to preserve the integrity of its records, prevent the unauthorized use of information, and limit possible legal liability. The court may choose to require each user to submit a signed, written agreement enumerating those conditions before it permits that user to access electronic records remotely. The agreements may define the terms of access, provide for compliance audits, specify the scope of liability, and provide for sanctions for misuse up to and including termination of remote access.

Rule 2.545. Termination of remote access

(a) Remote access is a privilege

Remote access to electronic records under this article is a privilege and not a right.

(b) Termination by court

A court that provides remote access may, at any time and for any reason, terminate the permission granted to any person or entity eligible under the rules in article 4 to remotely access electronic records

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

#	Commentator	Position	Comment	Committee Response
1	California Child Support Directors Association By Greg Wilson, MPPA, CAE Executive Director 2150 River Plaza Drive, Suite 420 Sacramento, CA 95833 Tel: 916-446-6700 Fax: 916-446-1199 www.csdaca.org	AM	Thank you for this opportunity to provide formal Comment to Judicial Council proposal SPR18-37, titled "Technology: Remote Access to Electronic Records". This letter is written on behalf of the California Child Support Directors Association (CSDA). The CSDA was established in 2000 as a non-profit association to represent the local child support directors of California's 58 counties. The CSDA strives to be of service to local child support agencies (LCSAs) in their efforts to provide children and families with the financial, medical, and emotional support required to be productive and healthy citizens in our society. California's Child Support Program collects over $2-4 billion annually for the one million children it serves. LCSAs and their staff work directly with the Courts to accomplish the core purpose of establishing parentage, and establishing and enforcing support orders, as set forth in Family Code§ 17400. The purpose of this letter is to comment on a specific section of	The committee appreciates the comments, but declines to modify the proposed rule to make it mandatory for the court rather than permissive. The access by government entities in article 4 is meant to be permissive on the part of the court. The rules only govern remote access and not access in general to the courts. Courthouse access should still be an option. While a statewide level of remote access to all 58 courts' electronic records may be desirable, the courts should be able to exercise discretion in this area to meet their business needs and capacity.

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			SPR18-37, regarding the following section at pp. 30-31 of the proposal: Article 4. Remote Access by Government Entities, Rule 2.54o(b), which provides: **(b) Level of remote access** (1) A court may provide authorized persons from government entities with remote access to electronic records as follows: . . . (B) California Department of Child Support Services: family electronic records, child welfare electronic records, and parentage electronic records. [Emphasis added] This proposed Rule of Court is a positive development, in that it moves in the direction of promoting efficiency in the Child Support Program by proposing a court rule as legal authorization to the court and judicial officers the discretion to give LCSAs access to court records regarding parentage in Uniform Parentage Act cases.	

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			However, the CSDA suggests the following language as to subsection (b)(1): (1) A court shall provide authorized persons from government entities with remote access to electronic records as follows: By changing "may" to "shall", at least in the context of LCSA access to court records within the scope of this comment, LCSAs throughout the state will be assured of consistent application of the Rule of Court by each Court within the State of California. This in turn will ensure that each LCSA throughout the State will enjoy the same level of access to the electronic records specified in subdivision (b)(1)(B). Conversely, the use of "may" as proposed, will allow individual courts to determine, in their discretion, whether to allow access to the records or not. We fear that approval of the Rule of Court in its	

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			present draft form, essentially providing discretion to allow access to the records, will lead to inconsistent results between Courts, and therefore, inconsistent access and levels of customer services to the LCSAs, and therefore, to the customers, families and children whom the child support program is mandated to serve. Moreover, amending the proposed Rule of Court to be directory, using "shall" will save Court time and resource in having to determine on a case-by-case basis, whether to exercise discretion in allowing access to the records. There may be increased motion activity and use of court time to resolve access issues on a case-by-case basis should the discretionary language of "may" not be amended to a uniform standard using "shall". The CSDA appreciates the Judicial Council's consideration of this comment and appreciates the	

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			opportunity to provide input in this process.	
2	California Department of Child Support Services By Kristen Donadee, Assistant Chief Counsel; Leslie Carmona, Attorney III Office of Legal Services Tel: 916-464-5181 Fax: 916-464-5069 Leslie.Carmona@dcss.ca.gov	AM	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. Specific feedback related to the provisions of the rule with potential impacts to the Department and its Stakeholders follows. Rule 2.540 The Department supports the adoption of this rule for the following reasons: 1) It clarifies that the Judicial Council of California (JCC) has determined that providing justice partners with remote access is a public policy it supports; 2) It encourages trial courts to provide remote access to the extent	The committee appreciates the comments. The committee declines to make rule 2.540 mandatory. It is permissive so the courts can exercise discretion to meet their business needs and capacity. The proposal is intended to provide statewide authority, structure, and guidance to the courts. Though statewide uniformity in the child support program may be a desirable outcome, it is not the goal of the proposal. The committee declines to combine Department of Child Support Services with local child support agencies. The rules were intentionally organized by each individual government entity. It is possible that government entities under rule 2.240(b) may be treated differently in terms of remote access, but it is in the court's discretion to provide remote access to government entities. The court is in the best position to know its business needs and capacity to provide remote access to each type of government entity.

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			supported by their court case management system; 3) It recognizes that such access would reduce impacts on court clerks; and 4) It best serves the needs of individuals receiving services from government entities. The Department recognizes that the JCC cannot impose a requirement that all courts provide remote access to their high-volume justice partners at this time due to the lack of a single statewide court case management system. However, there is an opportunity for the JCC to promote greater court access for high volume justice partners than is contemplated by the permissive rule as drafted. More specifically, the Department would encourage the JCC to consider amending the rule to mandate that trial courts provide remote access to local court case management systems when feasible. The Department also appreciates formal recognition by the JCC that	In addition, incorporating them in the same rule could be read as requiring the courts to take an "all or none" approach with these entities and the subcommittee does not believe that is a desirable outcome. The committee declines to make "local child support agency" plural in rule 2.540(b)(1)(B), but will instead address the issue in advisory committee comments because this could apply not only to local child support agencies, but other local government entities as well. While the rules are not written to lock the courts into the county boundaries and only allow remote access by government entities in the county where the court resides, an advisory committee comment should make this clear. The committee declines to include non-exhaustive list of authorities on "parentage" as it is unnecessary. Finally, the committee declines to add language about fees. Fees are outside the scope of the rules proposal. To the extent there may be shared funding or costs

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			remote access to multiple case types supports the ability of the child support program, as a whole, to discharge its state and local mandates effectively. Such access helps the Department provide vitial [sic] information about all court orders entered in California to the Federal Parent Locator System. Remote access is also valuable because it permits local child support agencies to have timely access to information about any onoing in-state court proceedings and the existence of California parentage and child support judgments. Access to this vital case information helps ensure that local child support agencies do not ask courts to enter conflicting or void child support judgments.· That said, the Department has concerns that the rule, as drafted, may not achieve statewide uniformity for the child support program as the JCC appears to intend. To amerilorate this risk, the Department respectfully requests that the JCC consider amending the child support	between the courts and government entities, those matters can be handled through the agreements between the courts and the government entities.

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			provisions of Rule 2.540(b)(1) in two ways. First, under California law, both the Department and all child support agencies have the same right to access this type of information. By creating two separate subparts, the rule seems to suggest these two governmental entities may be.treated differently. This problem could be avoided by combining (b)(1)(B) an (b)(1)(J) into a single exception, . as follows: (b)(1)(B) California Department of Child Support Services *and local child support agencies:* family electronic records, child welfare electronic records, and parentage electronic records. Second, while it appears the JCC intends to ensure that the Department and LCSAs have electronic access to filings under Family Code Section 17404, and the Uniform Parentage Act (UPA), as provided by Family Code section 7643, the term	

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			"parentage" may be narrowly construed by some courts. As such, the Department respectfully requests that the term "parentage electronic records" be defined as follows: (b)(1)(B) California Department of Child Support Services *and local child support agencies:* family electronic records, child welfare electronic records, and parentage electronic records. *For purposes of this section, the term "parentage electronic records" includes, but is not limited to, any electronic record maintained by the court in any proceeding under: (1) the Uniform Parentage Act, to the extent permitted by Family Code Section 7643, (2) Family Code Sections 17400 and 17404, (3) the Uniform* *Interstate Family Support Act, or any of its predecessor laws, or (4) any other parentage proceeding, to the extent permitted by law.* The Department is also concerned	

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			that the rule, as drafted, might have other unintended consequences. In prior cycles, the JCC formally recognized through its adoption of the Notice of Change of Responsibility for Managing Child Support Case (Governmental) (FL-634) that LCSAs are able to enforce orders established in other counties now that there is a single statewide child support computer system and that such practice helps ensure there is no interruption in the flow of payments to families, particularly those that move from county to county on a regular basis. It is important that ***all*** local child support agencies have the ability to view California court records in different counties remotely. To avoid a misapplication of this rule, the proposed wording of Rule 2.540(b)(1)(J), referencing 'local child support agency' singular, may lead to confusion regarding whether an LCSA may seek remote access to court records for a court located in another county; thus, we recommend that the word "agency" be changed to	

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			"agencies" as stated above. The Department appreciates the addition of a good cause exception. It is noted that the LCSAs often have to file liens in civil and probate actions to secure payments for families. This good cause exception should make it clear to trial courts that they should not be restricting access to these case types in situations where it has already approved access to the Department and the LCSAs. It also encourages trial courts that are in the process of upgrading their current court case management system to develop it in a way that would permit the Department and the LCSAs to have increased access to these types of records. Finally, it is noted that the child support program has cooperative agreements with the JCC to provide funds to the trial courts to support their ability to provide remote access to the Department and the LCSAs. This cooperative agreement is supported by Title 45, Code of	

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			Regulations, section 302.34. In light of this relationship, the Department respectfully requests the JCC add a new subdivision to Rule 2.540, or alternatively add clarifying language to Rule 2.540(b)(1)(B), as follows: Nothing in this rule shall be construed to give courts the authority to impose remote access fees on any governmental entity receiving federal funds, either directly or indirectly, in accordance with Title 45, Code of Regulations, section 302.34.	
3	California Lawyers Association, by The Executive Committee of the Trust and Estates Section of CLA 180 Howard Street, Suite 410 San Francisco, CA 94105 TEXCOM Ellen McKissock Hopkins & Carley	AM	The Executive Committee of the Trusts and Estates Section of the California Lawyers Association (TEXCOM) supports the purpose and the general detail of the proposed changes to California Rules of Court, rules 2.500-2.507 and the addition of rules 2.515 through 2.258. However, TEXCOM believes that the purpose of the new rules would be clearer if that purpose was actually stated in the Rules of Court, rather than in the Advisory Committee	The committee appreciates the comments. The suggested language provides clarity and will be added to the rule.

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	Tel: 408-286-9800 E-mail: emckissock@hopkinscarley.com California Lawyers Association Saul Bercovitch Director of Governmental Affairs California Lawyers Association Tel: 415-795-7326 E-mail: saul.bercovitch@calawyers.org		Comment. Practitioners will rely upon the actual rules set forth in the Rules of Court to understand the difference between the new "Article 2 Public Access" and the new "Article 3 Remote Access by a Party, Party Designee, Party's Attorney, Court Appointed Person." At present, we do not locate a statement in any of the rules that simply clarifies that Article 3 is intended to apply to the electronic records where remote access by the general public *is not* allowed (i.e. to the ten categories in Rule 2.507). To understand what Article 3 applies to, one must read the Advisory Committee Comment. Therefore, TEXCOM recommends that proposed rule 2.515 be revised as follows: **Rule 2.515 Application and scope** (a) No limitation on access to electronic records available through article 2 The rules in this article do not limit remote access to electronic records available under article 2. **These rules govern access to electronic records where remote access by the public is not allowed.**	

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			Without this clarification, members of TEXCOM initially read these new rules as creating additional hurdles and restrictions, and were opposed to the new rules. After reading the Advisory Committee Comments, TEXCOM understood the intent and supports the proposal if this clarification is made.	
4	Timothy Cassidy-Curtis 4467 Lakewood Blvd. Lakewood, CA 90712 Email: tcassidycurtis@roadrunner.com	AM	While all information, particularly personally identity information (PII) needs to be protected, it is also important to allow persons to electronically access all records that pertain to them. A particular example is the Application of petitioners for Change of Name. Our society is highly mobile, therefore electronic access of such records is essential, particularly when these records are to support further requests for personal documentation, such as birth certificates, etc. In my case, I am seeking my birth certificate from the State of New York. However, because I successfully petitioned to change my name (due to marriage; I am male, so that was the only option available) it becomes necessary to obtain original or	The committee appreciates the comment. The proposed rules do not require the courts to certify electronic records to which they provide remote access though courts could do so, within their discretion, in light of statutory authority to certify electronic records under Government Code section 69150(f).

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			certified court records regarding the petition to change my name. As you can imagine, travel to Santa Barbara would entail some difficulties, and an expenditure of energy that could be avoided with concurrent contribution to conservation along with avoidance of pollution and avoidance of Carbon Dioxide emissions. After several moves, the original issued by the court (it's been several decades!) becomes a problem. In the end, we need to be able to depend on the Court to provide certified records that pertain to us, in electronic format, or at least make an order (with, possibly, some payment to defray Court's costs), with a certified document mailed to us. All these reasons should support a very thorough conversion of records to electronic format, for production/publication as needed by persons to whom they pertain. Thank you for listening.	
5	Orange County Bar Association	N	The OCBA is opposed to these Rule of Court amendments because they are	The committee appreciates the comments. It is unclear to the committee about what

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	By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710		unnecessary, possibly unconstitutional, contradictory, and well beyond the "limited" amendments referenced in the Executive Summary. The OCBA responds to the requests for specific comments as follows: (a) the proposal does not appropriately address the stated purpose because it merely creates unnecessary complexity to an area of law already governed by constitutional issues, freedom of the press, rights of privacy, access to justice and other issues not susceptible to these specific proposals; (b) the remainder of the requests merely demonstrate the problems with this proposal – the general rules for open public access should not be so limited and restricted as set froth, it appears that the rules for a party's or attorneys access are more contrained than the general public and why should not other attorney's not involved in the case be allowed full access for purposes of investigation, research, background, due diligence, education, etc? The media will also have problems with these proposals because it is unclear whether their attorneys fall under the "general public"	is unconstitutional or contradictory about the rules in the proposal. Not all records are remotely accessible by the general public by design to strike a balance between privacy and remote access. No members of the media submitted comments. A media entity's attorney would have the same level of access as any other attorney representing a party in a case under the new rules. Regarding the amendment to rule 2.501(b), that rule only addresses providing plain language information to the public about access to electronic records. The new provisions governing remote access in article 3 and 4 provide for authority and responsibility of the courts. Those provisions broaden the opportunities to provide remote access. Regarding the amendments to rule 2.503(e), the comment is outside the scope of this proposal, as it is unrelated to the proposed amendments. The proposed amendments make only technical changes to the existing rule.

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			rules or the "party and party attorney" exceptions which appear to limit open access. Rule 2.501(b) appears to grant individed trial courts rights to further define and limit access which defeats the very purpose of these proposed "uniform" rules. Rule 2.503(e) outlines unnecessary and legally untenable restrictions and access to undefined "extraordinary criminal cases." The rule is confusing, unnecessary, and probably discriminatory and unconstitutional. The entirety of Article 3 regarding access by a party, party designee, party attorney, court-appointed person, or "authorized person working in a legal organization" appears to be unnecessary, too redundant, too restrictive, and probably discriminatory. The entirety of Article 4 has the same problems as Article 3 and suffers	The comments on articles 3 and 4 are broad and conclusory. The committee cannot formulate a response without more information on the conclusions in the comments.

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			again from being unnecessary for these purposes.	
6	Superior Court of California, County of Orange By Cynthia Beltrán, Administrative Analyst Family Law and Juvenile Court Tel: 657-622-6128 E-mail: cbeltran@occourts.org	NI	**What would the implementation requirements be for courts?** *This is dependent upon whether or not courts have existing applications that allow remote access.* **What implementation guidance, if any, would courts find helpful?** *A quick reference* **Should proposed rule 2.518 be limited to certain case types?** *Yes, the rule should be clear that it does not apply to juvenile justice and dependency case types.* **Would an alternative term like "preliminary legal services" be more clear?** *Yes. Is the intention to allow attorneys on a case to have permanent access or is there an expectation the court must manage limited-time access to those that are given consent? Similar to restricted access for designees. Additionally, once consent*	The committee appreciates the responses to the request for specific comments and they are helpful, providing needed information to the committee. Regarding rule 2.518, if the concern is that a designee may obtain confidential information, the designee level of remote access is only to the same information the public could get at the courthouse. Information that is not available to the general public at the courthouse will not be remotely accessible by the designee. Regarding brief legal services and time limited consent, there is not an expectation that courts must manage limited-time access except for the party designees under rule 2.518 where a party may limit a designees access to a specific period of time, limit access to specific cases, or revoke access at any time. The process would be expected to be built into the system. Otherwise, the scope of

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			is given by a party for others to have access do you intend to create a process for them to retract consent? **Is the term "legal organization" and its definition clear or necessary?** *Yes, it is clear and necessary.* **Would referring to persons "working at the direction of an attorney" be sufficient?** *No, that is too broad of a definition.* **Is "concurrent jurisdiction" the best way to describe such cases or would different phrasing be more accurate?** *Concurrent jurisdiction should be defined within the rule itself.* **Is the standard for "good cause" in proposed rule 2.540(b)(1)(O) clear?** *Yes* **Would the proposal provide cost savings?** *No, the administration of managing remote access and unique credentials under these rules will result in ongoing-additional costs. Maintenance of*	consent in the context of a qualified legal services project providing brief services would be dictated by agreement between the party and the organization. Need committee responses here and immediately below. Make sure the responses align with the comments throughout this chart. The comments on costs will be included with the Judicial Council report.

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			restricted and/or limited term access to remote information will be necessary and require someone to control. Managing user ID's and password control should also be considered. guide for courts to reference when developing remote access applications would be helpful.	
			Would providing limited audit trails to users under rule 2.256 present a significant operational challenge to the court? *This is more of a technical challenge more than an operational challenge. Clarification would be needed on what a limited audit trail is or what the purpose is in providing it to authorized users. While it says the limited audit trail must show the user who remotely accessed electronic records, it is uncertain what the reason a remote access user needs to see who else accessed the record. It is recommended additional information be included in this rule to clarify the intent of providing a limited audit trail.*	The committee will add an advisory committee comment explaining the purpose of the audit trail.

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7	Superior Court of California, County of Orange, West Justice Center By Albert De La Isla, Principal Analyst IMPACT Team – Criminal Operations Tel: 657-622-5919 Email: adelaisla@occourts.org	NI	For courts that already provide electronic remote access to defense and prosecutors / law enforcement, would we have to go back and re-certify each access as well as have them sign user forms?	To the extent remote access is already being provided consistent with the rules, there is no need to re-do any certifications or user agreements. If remote access is provided that is not compliant with the rules then the courts should take necessary steps to become compliant. Note that the rules do not prescribe any particular method for identity verification or capturing consent. This could be done through agreements between the government entities and the court (e.g., the government entities will have almost certainly verified the identities of their own employees and can confirm that is authorized users are who they say they are).
8	Superior Court of Placer County By Jake Chatters Court Executive Officer 10820 Justice Center Drive, Roseville, CA 95678 P. O. Box 619072, Roseville, CA 95661 Tel: 916-408-6186 Fax: 916-408-6188	AM	The Placer Superior court appreciates the opportunity to comment on the proposed California Rules of Court 2.515-2.528 and 2.540-2545 and amended rules 2.500-2.503 for the remote access to court records. The Trial Court Presiding Judges' Advisory Committee (TCPJAC) and the Court Executive Advisory Committee (CEAC) have submitted comments that	The committee appreciates the feedback. Please see the committee response to the TCPJAC/CEAC comments.

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			support this proposal but request clarifying amendments. Our court joins TCPJAC/CEAC in their comments. We are pleased to offer our agreement with the rule changes, while encouraging the Committee to consider the amendments proposed by TCPJAC/CEAC. Thank you again for the opportunity to comment.	
9	Superior Court of San Bernardino County By Executive Office ExecutiveOffice@sb-court.org	NI	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	Regarding the comment about CASAs, the remote access rules do not alter confidentiality requirements to juvenile court records. That would require legislative and rule-making action that is beyond the scope of this proposal.

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			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.) In the term "Brief Legal Services", the juvenile courts provide access to "CASA Volunteers" who are appointed to the minor and are an integral part of the juvenile court. The issue is when the minors become "Non-Minor" dependents and CASA is not allowed to view their delinquency file either electronically or in paper, without the minors approval (1/1/2019). Comments: Level of Remote Access: Appointed Counsel other than the public defender is not listed, i.e. counsel for minors or parents in Dependency Court. i.e. the "conflict panel" for delinquency and dependency attorneys should be included, along with Guardian Ad Litems that are appointed in juvenile court matters.	Tthe committee assumes the comment is in reference to rule 2.540(b), which is the only rule that mentions public defenders in particular. That rules is part of article 4, which governs remote access by government entities to specified records. Entities that do not meet the definition of "government entity" will not fall within the scope of that rule. Court-appointed

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				persons and attorneys for parties would gain access under the rules of article 3.
10	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q 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? An emancipated or married minor should be exceptions for a person under 18 years of age. Additionally, should an exception be made for someone who is over 18 years of age but under a Conservatorship? Q Should proposed rule 2.518 be limited to certain case types? No. Q The term "brief legal services" is used in the proposed rules in the context of staff and volunteers of "qualified	The committee appreciates the responses to the request for specific comments. They are helpful and insightful information for committee to consider. The committee appreciates the point concerning the age cut off in rule 2.518 as it appears it is a standard that is both under and overinclusive.

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			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? The proposed "brief legal services" is clear and preferred over "preliminary legal services." Preliminary makes it sound like it would only be during the case initiation phase, when in reality they could obtain assistance throughout the life of a case. Q Is the term "legal organization" and its definition clear or necessary? The proposed "legal organization" is clear. Q 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	

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			to persons "working at the direction of an attorney" be sufficient? The definition is clear and it is helpful to include the list of examples, such as partners, associates, employees, volunteers and contractors. The alternative suggested is too broad with room for interpretation. Q 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? The phrase "concurrent jurisdiction" is sufficient to describe these scenarios. Q Is the standard for "good cause" in proposed rule 2.540(b)(1)(O) clear? Yes. Q The proposed rules have some internal redundancies, which was intentional, with the goal of reducing	

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			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 included language is clear and reduces the need for the user to refer to additional rules. Q: Would the proposal provide cost savings? No. Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management	The comments on costs and implementation will be included with the Judicial Council report.

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			systems, or modifying case management systems? In order to be able to answer this question, our court has identified the following issues: 1. Our court needs to understand the business and technical requirements of the implementation. For example, we need to understand the audience that will need access. Will each group of the audience have the same or unique access requirements. For example, do we need to restrict access from specific networks. 2. Audit and security requirements. Our court needs to be able to generate reports on who, where, when and how long the application was used by remote users. 3. Testing. Our court needs to be able to identify the testing requirements, especially if the level of access for each audience is different. There needs to be participation from the justice partners (i.e. government agencies). 4. Training. Tip sheets will need to be prepared for the users.	

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			5. Legal. There needs to be some kind of MOU with the remote user\justice partner. Q: What implementation guidance, if any, would courts find helpful? A governance and best practice checklist for implementing remote access. Q: 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? No. The conditions stated in rule 2.256 are sufficient. <u>General Comments:</u> **2.521(a)(2):** Suggests that the following citations be added for appointment of an attorney in Probate: Probate Code §§ 1894, 2253, and 2356.5	The committee declines to add the additional citations they do not confer separate, independent authority or duty on the court to appoint.

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			2.540(b): Proposes that Public Administrator and Public Conservator be added to the list of authorized persons from government entities that may be provided remote access to electronic records.	The committee will recommend a proposal be developed for future rules cycle to add the public administrator and public conservator. In the interim, courts can use the "good cause" provision to provide access.
11	Superior Court of California, County of San Joaquin Erica A Ochoa Records Manager 540 E Main Street Stockton CA 95202 Tel: 209-992-5221 eochoa@sjcourts.org	NI	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? I think you should match the age guidelines applied to filings such as DV/CH orders. If a person, legislatively can file then they should have the right of assigning a designee of their choice to access their records. I believe the age is 12. • Should proposed rule 2.518 be limited to certain case types?	The committee appreciates the responses to the specific comments as they are helpful in determining the committee's recommendation to the council. The committee declines to reduce the age to 12. Ultimately, the user must have the legal capacity to agree to be bound by the terms and conditions of user access.

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

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			If you do not limit now, you will have a much more difficult time limiting later. It is safer to begin limited and slowly release additional information. Once you have given unlimited access it is very difficult to convince the public you are not hiding something by taking choices away. The question of transparency will be front and center rather than the right to protect information. • 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? Yes it is.	

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			Would an alternative term like "preliminary legal services" be more clear? No, I think it would be more confusing. We often try to read between the lines to properly interpret and understand the intent behind a lot of legislation and/or rules. Describing these temporary services as "brief" rather than "preliminary" makes it clearer as to their involvement in the case. • Is the term "legal organization" and its definition clear or necessary? Yes it is and yes it must, without it any organization can make the plea for access whether or not they are party to the case. • 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? Yes it would and would add clarity to the rule.	

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#	Commentator	Position	Comment	Committee Response
			• 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? No, I think it is confusing because it gives the impression both courts have agreed jurisdiction is shared when it may not necessarily be. We can apply the rule if the description remained the same as other government agencies and remove the word "concurrent". • Is the standard for "good cause" in proposed rule 2.540(b)(1)(O) clear? Yes, it is. • 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	

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			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? Yes, it does. Would another organizational scheme be clearer? No additional comment. • Would the proposal provide cost savings? If so, please quantify. In the long run there may be some savings due to less walk-in customers at local courthouses however the costs associated to comply with all levels of identity verification and access will create additional ongoing costs for the court. There will also be additional ongoing costs for the addition of staff to monitor, manage, and update all changes required to comply with the identity verification and audit trail	Comments on the costs and implementation will be included with the Judicial Council report.

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			requirements. We cannot quantify the savings as we cannot predict the amount of public who will have the means to access court records remotely nor do we know the exact amount of employees needed to maintain these requirements. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising 12 processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? There will be a level of training necessary to implement a process such as this but it is not possible to specify the exact amount of time necessary to execute all processes. For example, in our court, time and cost must be invested to: • Set up, testing, training, and implementation of an additional program because our current case management system is not set up to handle the identity and	

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			audit trails required in the amendment. • Create and train staff assigned to monitor and manage the additional program for questions from the public, account set-up, password management, and any other situation arising from user end regarding remote records access. • What implementation guidance, if any, would courts find helpful? Provide all the information for the Service Master agreement as soon as possible to allow courts to reach out to vendors and explore the on-going cost, time investment, maintenance, in order to determine if it is feasible for the court to follow through with implementation of remote records access. • 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	

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			under rule 2.256 present a significant operational challenge to the court? Yes it would. Allowing ad-hoc report requests is new to our organization and would require staff, time, and on-going costs in order to maintain the ability to create these reports. If so, is there a more feasible alternative? Require the customer to provide good cause for a report to be created and allow us to determine how and when to create these reports for the purpose of auditing the system to ensure proper usage.	The committee declines to add "good cause" language. The committee has instead made the audit trail permissive rather than mandatory.
12	TCPJAC/CEAC Joint Rules Subcommittee (JRS) By Corey Rada, Senior Analyst Judicial Council and Trial Court Leadership | Leadership Services Division Judicial Council of California 2860 Gateway Oaks Drive, Suite 400 Sacramento, CA 95833-3509 Tel. 916-643-7044	AM	The following comments are submitted by the TCPJAC/CEAC Joint Technology Subcommittee (JTS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC). **SPR18-37:** Recommended JTS Position: Agree with proposed changes if modified.	The committee appreciates the comments. The comments on impacts on case management systems, workload, and security will be included with the Judicial Council report. Regarding rule 2.502(4), the suggested modification is clearer and the committee has made this change.

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#	Commentator	Position	Comment	Committee Response
	E-mail: Corey.Rada@jud.ca.gov www.courts.ca.gov		JTC recognizes the need for changes to the existing remote access to electronic records rules. On balance, the changes recommended by ITAC present necessary clarifications to the rules and establish reasonable requirements for accessing court records. However, JTS notes the following impact to court operations: • The proposal will create the need for new and/or revised procedures and alterations to case management systems. A number of proposed revisions in the proposal would present a workload burden on the trial courts, create new access categories that will result in significant one-time or ongoing costs, and complicate the access rules in a way that may result in confusion for the public. • Increases court staff workload – Court staff would be required to verify the identity of individual(s) designated by the party to access their case.	Regarding rule 2.503(b)(2), the suggested modification will be made as a technical correction. Regarding rule 2.516, the committee agrees to add an advisory committee comment clarifying that different user types can be added as it becomes feasible to do so. The committee did not intend for the rules to require the courts to proceed in an "all or none" fashion with respect to the users identified in rule 2.515. Regarding rule 2.518, the committee declines to add a statement that providing remote access under rule 2.518 is optional because it is contrary to the intended scope of article 3. This type of remote access is not optional if it is feasible to provide it. If it is not feasible for a court to provide remote access to party designees (e.g., court does not have the financial resources, security resources, technical capability, etc.), courts do not have to provide it. The committee declines to add a rule that a party must make an affirmative declaration absolving the Judicial Branch of liability, such a rule

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			• Security – The proposed changes could result in security complications and allow for data intrusion. *Suggested Modifications:* • **Rule 2.502 Definitions** o Modify the definition of "court case information" to use more natural language to reduce confusion. A possible definition might be: "Court case information" refers to data that is stored in a court's case management system or case histories. This data supports the court's management or tracking of the action and is not part of the official court record for the case or cases. • **Rule 2.503(b)(2)** o "All records" should be "All court records." By excluding the term "court" in this section, it seems that the public access may be expanded beyond "court records." • **Rule 2.516 Remote access to**	is unnecessary. Courts can include terms regarding liability in user agreements. Regarding rule 2.519(c), the rule was developed under the assumption that the rules of professional conduct would constrain attorneys from making misrepresentations to the court and that the court could rely on an attorney's representation of a party's consent. The challenge with limited scope representation in particular is that the attorney may be unknown to the court. Attorneys providing limited scope representation under chapter 3, of title 3 (the civil rules), are permitted to provide noticed representation or undisclosed representation. Requiring an attorney to file a notice of limited scope representation requires notice and service on all parties. (Rule 3.36(h).) Being required to provide noticed representation could add costs to the party who only require assistance in the drafting of legal documents in their matters, or require assistance with collateral matters. It is not clear what the benefit would be of requiring attorneys to file a notice of

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			the extent feasible o The language makes clear that courts may provide varied remote access depending on their capabilities. However, as written it is unclear whether it is ITAC's intent that courts refrain from moving forward with any part of the remote access options until they can move forward with all of the options. To avoid confusion and/or unnecessary delays in implementation of some portions of remote access, the rule could be modified to add: *Courts should provide remote access to the greatest extent feasible, even in situations where all access outlined in these rules is not feasible.* Alternatively, or in addition, we ask that ITAC consider adding a statement to the Advisory Committee Comment to indicate: "This rule is not intended to prevent a court from moving forward with limited remote access options outlined in this rule as such access becomes feasible." • **Rule 2.518 Remote access by a party's designee**	limited scope representation or declaration of representation on appeal over requiring an attorney to "represent [] to the court in the remote access system that the attorney has obtained the party's consent to remotely access the party's electronic records." That representation is how the court would know that consent had been given. TCPJAC/CEAC raise a concern that remote access under (c) "might include documents that are not publicly viewable." This should not be the case. An attorney providing undisclosed representation is still limited by the information that the attorney could get at the courthouse. If an attorney providing undisclosed representation showed up at the courthouse, he or she could access any public court records. The remote access rules are replicating that. What rule 2.519(c) does is allow remote access to materials that is only available to the public at the courthouse under rule 2.503(c). In short, with respect to attorneys who are unknown in the case because their representation is undisclosed, the remote access is to public

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			TCPJAC and CEAC strongly encourages ITAC to amend this provision. TCPJAC/CEAC offers the following additional comments: ▪ Add a statement making clear that the provision of this type of access is optional and not a mandate on the trial courts. ▪ Add a rule that the party must make an affirmative declaration that by granting their designee access to their case file, the trial court and the Judicial Branch are absolved of any responsibility or liability for the release of information on their case that is inconsistent with this or other rules or laws. • **Rule 2.519(c) Terms of remote access for attorneys who are not the attorney of record in the party's actions or proceedings in the trial court** o This rule presents a significant security risk to court data and could add an additional burden on the court. This section appears to contemplate	court records. An attorney providing undisclosed representation should not be able to view documents that are not publicly viewable. The committee added additional information to the advisory committee comment to clarify this point. TCPJAC/CEAC raises concerns that (c) also increases the risk of a data breach and wrongful access and has requested that (c) be optional on the part of the court. The remote access to users in article 3 is not meant to be optional, but rather required if feasible. It is not clear why the feasibility qualification would not be sufficient to address this, e.g., if it is not feasible for the court to provide adequate protections against data breaches then it would not be required, or if it is not feasible for the court to provide differential access to attorneys of record vs. other attorneys who have party consent then it would not be required. The revision to the advisory committee comment on rule 2.516 concerning feasibility makes clear that having adequate security resources can be part of whether providing users access is feasible.

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			giving access to case information that is otherwise not publicly available, to attorneys who have not formally appeared or associated in as counsel in the case. It is unclear how the party would inform the court of their consent to have the attorney access the case information, which might include documents that are not publicly viewable. It is also unclear how the court would verify the identity of the attorney who is not of record in this process. If this provision remains, the attorney access should be significantly limited. For example, fair and reasonable access can be accomplished by requiring an attorney to file notice of limited scope representation. Similarly, an appellate attorney representing the party on an appeal relating to the action may be provided access upon declaration that the attorney is attorney of record in appellate proceedings. Additionally, attorneys providing brief legal services are provided access otherwise in these rules. To expand the attorney access to any attorney	The commenters also state that "It is also unclear how the court would verify the identity of the attorney who is not of record in this process." By design, the rules do not prescribe any specific method for a court to use for identity verification. It is something the court could do (e.g., require an attorney to appear at the court and show their identification and bar card to get user credentials), require a legal organization or qualified legal services project to do (e.g., require in an agreement that the organization to do identity verification of its attorneys and staff and provide that information to the court), or contract with an identity verification service to do (e.g., a private company that is in the business of identity verification). A court must verify identities to provide remote user access under article 3, but if not feasible to do so, then the court does not need to provide the remote access. The comment about the release of liability relates to the party designee rule (rule 2.518) and is addressed in the analysis with that comment.

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			granted permission by the party would overly burden the court and appears unnecessary. Further, each additional tier of data access presents additional risk of data breach or the potential for bad actors to exploit access. TCPJAC and CEAC strongly encourage ITAC to amend this provision and offer the following additional comments: ▪ Add that the attorney file appropriate documentation of limited scope representation. ▪ Add a statement making clear that the provision of this type of access is optional and not a mandate on the trial courts. ▪ Add a rule that the party must make an affirmative declaration that by granting their designee access to their case file, the trial court and the Judicial Branch are absolved of any responsibility or liability for the release of information on their case that is inconsistent with this or other rules or laws. • **Rule 2.520 Remote access by persons working in the same legal organization as a party's attorney.**	Regarding 2.520, the committee agrees to add the advisory committee comment. The rules do not require any specific process. Certifying at one time and having that time be when an attorney establishes a remote access account is a logical and practical option. Regarding rule 2.522, the comment notes, that "this section appears to exempt these agencies from the limitations of remote access to cases defined in rule 2.503(c). The purpose of granting this exemption is unclear…" This section does exempt qualified legal services projects from the limitations of rule 2.503 in that qualified persons from a qualified legal services project may remotely access the court records accessible by the public only at the courthouse, specifically, those records outlined in rule 2.503(c). The purpose of the exemption is to provide remote access where remote access is otherwise precluded under the public access rules. The rule does not alter the content of the court records that can be accessed, only the method.

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			o We suggest adding an Advisory Committee Comment that the designation and certification outlined in (b) need only be done once and can be done at the time the attorney establishes their remote account with the court. • **2.522 Remote access by persons working in a qualified legal services project providing brief legal services.** o As written, this section appears to exempt these agencies from the limitations of remote access to cases defined in rule 2.503(c). The purpose of granting this exemption is unclear, particularly in light of the other additions to the rule. For example, if rule 2.518 is adopted, this section may be unnecessary. Similarly, if rule, 2.519 is adopted, this section again may be unnecessary. Further, if rules 2.518 and 2.519 are not adopted, this rule presents additional concerns: ▪ 2.522(b) requires the legal services project to designate individuals in their organization who have access, and certify that these	The comments state, "For example, if rule 2.518 is adopted, [rule 2.522] may be unnecessary." The committee disagrees. Rule 2.518 provides an alternative, but parties who do not have the ability to do access the system to provide designees, e.g., lack computer or internet access or lack the skills to access, would not be able to designate persons working at a qualified legal services project. Qualified legal services projects, like legal aid, serve populations with limited access to resources that may not be able to designate another under rule 2.518. The comments also state, "Similarly, if rule, 2.519 is adopted, [rule 2.522] again may be unnecessary." The committee disagrees. Rule 2.519 is attorney access. A person working in a qualified legal organization may not be an attorney, e.g. paralegal or intern. An attorney at a qualified legal services project may never end up providing representation. Regarding the comments on rule 2.522(b) and 2.522(d)(1), the committee will add an advisory committee comment to clarify. Courts and qualified legal services

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			individuals work in their organization. It is unclear whether this designation and certification is provided to the court or retained by the organization. It is also unclear whether this designation or certification is one-time, repeated, or must occur upon each access to a case. ▪ 2.522(d)(1) states that the organization must have the party's consent to remotely access the party's record. It is unclear how such consent would be documented. ▪ 2.522(d)(2) creates a specific technical requirement that courts would have to program into their remote access systems that requires a self-representation of consent each time the authorized person accesses a case. Unlike the other provisions of these rules, that appear to contemplate a one-time designation, this section would require an entirely new security layer at a "session" level to ensure the authorized individual continues to certify their authorization to access the case. • **Rule 2.523 – Identity verification, identity management, and user access**	projects have flexibility to determine methods that work best for them. Regarding the comments on rule 2.522(d)(2), the committee agrees that remote access could present a greater technical challenge. A court does not have to provide remote access to users under rule 2.522 if it is not feasible to do so, e.g., because the court's technical capacity makes it not feasible at present. Regarding rule 2.523, the committee agrees with exempting courts from verifying the identities of users gaining remote access as party designees under rule 2.518. The committee disagrees with exempting courts from verifying the identities of users under rule 2.519 and rule 2.522. Rule 2.519 has a mix of known and unknown persons (attorneys who have made an appearance, and attorneys who are undisclosed). Rule 2.522 will have persons unknown to the court. The identity verification process is meant to provide a way for unknown persons to be known and to verify that known persons are who they say they are. The rule is meant to be flexible in how a

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			o This section requires the court to verify the identity of all users accessing court data. This requirement is understandable when it relates to individuals who are known to the court to be a part of the case being accessed. However, placing a requirement on the court to verify the identity of individuals designated by the party to access their case is overly burdensome and places the court in the position to verify the identity of individuals unknown to the court. We suggest adding language to clarify that the court is not required to verify the identity of individuals granted access under rule 2.518, 2.519, and 2.522 (if those sections remain). These rules grant access to cases by individuals unknown to the court based solely upon the consent of the party or by designation of third-parties. Under these conditions, the party is consenting to access and the court should have no responsibility to perform identify verification. Further, as previously stated, in all such instances, the rules should clearly state	court verifies identities and it could be done by the court or through agreements with third parties, e.g., an agreement with a company that provides identity verification services, or an agreement with a qualified legal services project that the project is required to verify the identities and provide that verification to the court (it is likely that with respect to its own employees, a qualified legal services project would have already done its due diligent to verify that a person is who they say they are). In addition, rule 2.523(c) puts the onus on the person seeking remote access to provide the court with all information it directs in order to identify the person. The court is not obligated to seek out information about the person. If the information a person provides is insufficient to verify their identity, the court is not obligated to provide remote access. The committee does not believe subdivisions (a) and (d) are in conflict, but the commenter may interpret them as imposing on the court an obligation to

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			that the party is removing the court's responsibility for data security and confidentiality. o Subsections (a) and (d) appear to be in minor conflict. Suggest adding an indication that (d) applies notwithstanding (a). • **Rule 2.524 Security of confidential information.** o We suggest adding an Advisory Committee Comment that specifies that data transmitted via HTTPS complies with the encryption requirement. • **Rule 2.526 Audit trails** o Since these records would also be available at the courthouse, where no record of access is kept, the record keeping here seems to be unnecessary and burdensome. However, should ITAC choose to retain this section, we recommend it be modified as follows: *The court should have the ability to generate an audit trail that identifies each remotely accessed record, when an electronic record was remotely accessed, who remotely accessed the*	take additional steps to verify identities beyond what a legal organization or qualified legal services project has done. However, (a) is not requiring duplication of effort and (d) could satisfy (a). In other words, if a legal organization has verified the identity of potential remote user, a paralegal working at the legal organization named Jane Smith, and the legal organization communicates that it has done so with the court, the court does not need to take further steps to verify Jane Smith's identity. The court would have verified Jane Smith's identity through the legal organization. The committee will add an advisory committee comment to clarify that (d) can satisfy (a). Regarding rule 2.524, the committee declines to add an advisory committee comment. The rules are intended to be technologically neutral and not tied to any particular technology. Rather than adding an advisory committee comment about specific technologies that will change over time, this may be better addressed through informational materials such as

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			electronic record, and under whose authority the user gained access to the electronic record. The current mandatory language may result in a court being prohibited from providing any electronic access even with the ability to do so, if the court does not have the ability to provide the required audit trail. We suggest changing "must" to "should" and adding an Advisory Committee Comment making clear this rule is not intended to eliminate existing online services, but instead is intended to guide future implementations and upgrades to court remote services. This section would also benefit from a defined retention period for the audit records. ITAC may wish to establish a timeframe, e.g. one year, from the date of access or the disposition of the case as determined by the respective courts.	guidance documents or examples from courts. Regarding rule 2.526, the committee agrees to change the rule from mandatory to permissive in order to not stifle the use of existing systems. The committee will add an advisory committee comment that it expects the rule will become mandatory in the future. This should accommodate existing systems while also encouraging the inclusion of audit trails as remote access systems are developed and improved. The committee agrees that a rule governing a retention period for audit trails may be helpful and that may be addressed in a future rule cycle so it may circulate for comment.
13	Tulare County Public Guardian's Office By Francesca Barela, Deputy Public Guardian,	A	The proposed changes clarify and expand on the existing rules. I personal approve of these changes.	The committee appreciates the support.

ITC SPR18-37
Technology: Remote Access to Electronic Records

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#	Commentator	Position	Comment	Committee Response
	3500 W. Mineral King Ave., Suite C, Visalia CA, 93291 Tel: 559-623-0650 Email: FBarela@tularecounty.ca.gov			

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

Item number: 39

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23 or 24

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Approve form EFS-006

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

Staff contact (name, phone and e-mail): Andrea Jaramillo, 916-263-0991 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:
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).
Proposals within the scope of this item include:
(a) Proposals to create and amend rules to conform to legislation enacted in 2017. For example, new provisions of Code of Civil Procedure section 1010.6 expressly require the Judicial Council to adopt rules of court related to disability access and electronic signatures for documents signed under penalty of perjury. The new provisions also require express consent for electronic service, which will require a rule amendment, and creation of a form for withdrawal of consent.
(b) Proposals based on suggestions from the public such as revising definitions and addressing a barrier to indigent users accessing services of electronic filing service providers.
(c) Proposals for technical amendments to amend rules language that is obsolete or otherwise unnecessary.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Rules and Forms: Form for Withdrawal of Consent to Electronic Service

Rules, Forms, Standards, or Statutes Affected
Approve form EFS-006

Recommended by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2019

Date of Report
August 8, 2018

Contact
Andrea Jaramillo, 916-263-0991
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Anne Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

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.

Recommendation

The Information Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council adopt form EFS-006, *Withdrawal of Consent to Electronic Service*, effective January 1, 2019. The text of the new form is attached at pages 5–6.

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976, which amended provisions of Code of Civil Procedure section 1010.6 to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent

effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision that requires the Judicial Council to create, by January 1, 2019, a form for a party or other person to withdraw consent to permissive electronic service.

Analysis/Rationale

Code of Civil Procedure section 1010.6(a)(6) requires the Judicial Council to create a form for withdrawal of consent to electronic service by January 1, 2019. For the sake of consistency, the recommended form, EFS-006, *Withdrawal of Consent to Electronic Service*, is modeled after existing form EFS-005-CV, *Consent to Electronic Service and Notice of Electronic Service Address.*

Policy implications

The proposed form does has no significant policy implications. The form merely creates a formal mechanism for parties to use to withdraw consent to permissive electronic service.

Comments

Four commenters responded to the invitation to comment, either agreeing with the proposal or agreeing if modified. Three of the commenters responded to the invitation to comment's request for specific comments.

Clarifying use of the form for permissive electronic service only. The Superior Court of California, County of Los Angeles, suggested that form EFS-006 be modified to add the following under the title: "(This form may not be used for electronic service required by local rule or court order.)" The committees decided to incorporate the modification into form EFS-006 with the addition of the word "mandatory" to describe "electronic service," so the notice states, "This form may not be used for mandatory electronic service required by local rule or court order." The form is applicable only to permissive electronic service and not to mandatory electronic service. Accordingly, the modification adds clarity on the proper use of the form.

Responses to the request for specific comments. The invitation to comment requested specific comments on the following questions:

- 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."

The Superior Court of California, County of Ventura, commented, "It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service." The court recommended that the form be modified accordingly and that the example language regarding proof of service included in the second bullet point, above, be added to the form.

Both the Superior Courts of Los Angeles and San Diego Counties recommended that the proof of electronic service be retained on page 2 of the form. The Los Angeles court commented, "The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV." The San Diego court commented, "Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the [proof of service] and more convenient for the litigant." The San Diego court also commented that if the decision is to remove the proof of service, the proposed language for directing the completion of a proof of service is appropriate and clear.

The committees decided to keep the proof of electronic service with form EFS-006 because having it included would be more convenient for litigants. Although some litigants may elect to use form POS-030, *Proof of Service by First-Class Mail—Civil*, instead of the proof of electronic service included with form EFS-006 and, thus, will have to look up an additional form, removing the proof of electronic service from form EFS-006 would require *all* litigants to look up a separate proof-of-service form.

Internal comments concerning the ability to withdraw consent at any time by filing a form with the court. Both committees expressed concern with the provision in Code of Civil Procedure section 1010.6(a)(6) that states, "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." (Italics added.) The committees were concerned that this provision could lead to gamesmanship, with a party dropping consent around key deadlines, leaving the other party with insufficient notice. This concern may lead to a legislative proposal in the future.

Alternatives considered

The committees did not consider the alternative of not creating EFS-006, *Withdrawal of Consent to Electronic Service*, because statute mandates the creation of the form.

Fiscal and Operational Impacts

The new form is unlikely to result in any significant costs to or operational impacts on the courts.

Attachments and Links

1. Form EFS-006, *Withdrawal of Consent to Electronic Service*, at pages 5–6

2. Chart of comments, at pages 7–9
3. Link A: Code Civil Proc., § 1010.6, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		**DRAFT** **Not approved by the Judicial Council** **2018-06-12**
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		CASE NUMBER:
PLAINTIFF/PETITIONER:		JUDICIAL OFFICER:
DEFENDANT/RESPONDENT:		
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE		DEPARTMENT:

Notice: This form may not be used for mandatory electronic service required by local rule or court order.

1. ☐ The following self-represented party or ☐ the attorney for:
   a. ☐ plaintiff *(name):*
   b. ☐ defendant *(name):*
   c. ☐ petitioner *(name):*
   d. ☐ respondent *(name):*
   e. ☐ other *(describe and name):*

   withdraws consent to electronic service of notices and documents in the above-captioned action.

2. The mailing address for service on the person identified in item 1 is *(specify):*
   Street:
   City:
   State: Zip:

3. All notices and documents in the above-captioned action must be served on the person identified in item 1 at the address in item 2 as of *(date):*

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
EFS-006 [New January 1, 2019]

WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE
(Electronic Filing and Service)

Code Civ. Proc., § 1010.6(a)(6)
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

(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)

#	Commentator	Position	Comment	Committee Response
1	Orange County Bar Association By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710	A	No specific comment.	The committees appreciate the support.
2	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst Management Research Unit 111 N. Hill Street, Room 620 Los Angeles, CA 90012 Tel: 213-633-0452	AM	Suggested Modification: Form EFS-006 Under the title: Withdrawal of Consent to Electronic Service add: (This form may not be used for electronic service required by local rule or court order.) Request for Specific Comments: 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?	The committees appreciate the support, suggested modification, and responses to the request for specific comments. The suggested modification adds clarity to the form and the committee will recommend it with a minor addition of the word "mandatory" before "electronic service."

#	Commentator	Position	Comment	Committee Response
			The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.	
3	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101	A	Q: 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? **Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the POS and more convenient for the litigant.** Q 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	The committees appreciate the support and responses to the request for specific comments.

#	Commentator	Position	Comment	Committee Response
			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." **If the committee elects to remove the POS on page two, then the proposed language is appropriate and clear.**	
4	Superior Court of California, County of Ventura By Julie Camacho, Court Manager 800 S. Victoria Avenue Ventura CA, 93006 Email: julie.camacho@ventura.courts.ca.gov	AM	It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service. Yes, the indicated language regarding proof of service should be added to the form.	The committees appreciate the support and responses to the request for specific comments.

Item number: 40

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (amend Cal. Rules of Court, rules 8.600, 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600; CR-601, CR-602, CR-603, CR-604, and CR-605)

Committee or other entity submitting the proposal:
Proposition 66 Rules Working Group

Staff contact (name, phone and e-mail): Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: The working group's charge is available at the "about" tab at:
http://www.courts.ca.gov/prop66-working-group.htm.
Project description from annual agenda:

If requesting July 1 or out of cycle, explain:
The working group previously requested that this proposal be circulated for public comment on a shortened special cycle - starting on July 2 and ending on July 23 - so that the proposal could be presented to the Judicial Council for adoption at its September meeting. RUPRO approved this request at its meeting on July 2.

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

Title
Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 4.119, 4.230, 8.608, and 8.611; amend rules 8.600, 8.610, 8.613, 8.616, 8.619, and 8.622; repeal rule 8.625; adopt forms CR-600, CR-601, CR-602, CR-603, CR-604, and CR-605

Recommended by
Proposition 66 Rules Working Group
Hon. Dennis M. Perluss, Chair

Agenda Item Type
Action Required

Effective Date
April 25, 2019

Date of Report
August 17, 2018

Contact
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Executive Summary

The Proposition 66 Rules Working Group recommends the adoption of several new rules and amendments to several existing rules relating to the content and preparation of the record on appeal in death penalty cases that are designed to make the record preparation process more efficient. The working group is also proposing the adoption of six new mandatory forms designed to assist in the record preparation process. These recommended rules and forms are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66.

Recommendation

The Proposition 66 Rules Working Group recommends that the Judicial Council, effective April 25, 2019:

1. Adopt Cal. Rules of Court, rule 4.119, to address the responsibilities of counsel in pretrial proceedings in cases in which the death penalty may be imposed to facilitate preparation of a complete and accurate record during these proceedings by:
   - Reviewing, signing, and submitting a checklist outlining their record preparation responsibilities;
   - Preparing and submitting lists of their appearances, motions, and exhibits; and
   - Complying with the requirements of rule 2.1040 relating to electronic recordings presented or offered into evidence;
2. Adopt rule 4.230, to address the responsibilities of counsel in the trial proceedings in these cases to facilitate preparation of a complete and accurate record during these proceedings by:
   - Reviewing, signing, and submitting a checklist outlining their record preparation responsibilities;
   - Reviewing daily reporter's transcripts of the trial proceedings and bringing errors to the attention of the court, other than immaterial typographical errors that cannot conceivably cause confusion;
   - Preparing and submitting lists of their appearances, motions, exhibits, and jury instructions;
   - Complying with the requirements of rule 2.1040 relating to electronic recordings presented or offered into evidence; and
   - Submitting copies to the court of any audio or visual aids used in jury selection or presentations to the jury;
3. Amend rule 8.600, to delete the provisions addressing topics relating to the record on appeal in capital cases;
4. Adopt rule 8.608, to contain the record-related provisions deleted from rule 8.600;
5. Amend rule 8.610, to:
   - Clarify some items currently on the list of items that must be included in the clerk's transcript in capital cases;
   - Add to this list the following items that are regularly needed, but sometimes left out of, the clerk's transcript: any court-ordered diagnostic or psychological report required under Penal Code section 1369, visual aids submitted to the court under proposed rule 4.230, the table correlating the jurors' names with their identifying numbers, and documents filed under Penal Code section 987.2 or 987.9; and
   - Make other minor clarifying and conforming changes;

6. Adopt rule 8.611, to address the handling of juror-identifying information in the record of capital cases;
7. Amend rule 8.613, relating to preparing and certifying the record of preliminary proceedings in capital cases and rule 8.616, relating to preparing the record of trial proceedings in capital cases, to:
    - Require the trial court clerk to notify counsel when they must submit the lists of appearances, motions, exhibits, and jury instructions required under new rules 4.119 and 4.230 and to send copies of these to counsel with the reporter's transcripts and, under rule 8.616, the clerk's transcript; and
    - Encourage the clerk to deliver the clerk's transcript in electronic form if the court is able to do so;
8. Further amend rule 8.613 and amend rules 8.619 and 8.622, relating to review and certification of the record of trial proceedings for completeness and accuracy to clarify that immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention;
9. Further amend rules 8.613 and 8.619, to:
    - Require counsel to review the lists of appearances, exhibits, motions, and jury instructions required under new rules 4.119 and 4.230 as part of their review of the record of the proceedings;
    - Require that, within 21 days after the clerk delivers the transcripts and lists to counsel, they confer with each other regarding any errors or omissions they have identified in their review;
    - Clarify that counsel may file a joint request for corrections or statement that no corrections are needed; and
    - Make other minor clarifying and conforming changes;
10. Further amend rule 8.619 and rule 8.622, to:
    - Extend the deadlines for counsel to review the record and request corrections if the clerk's and reporter's transcripts combined exceed 10,000 pages; and
    - Provide that the time for the trial court to certify the record begins to run from when the last request to include additional materials or make corrections is filed, or, under rule 8.619, the last statement that counsel does not request any additions or corrections
11. Further amend rule 8.622, to:
    - Provide that a party may request that a copy of any documentary exhibit be included in the clerk's transcript and must state the reason that the exhibit needs to be included in the clerk's transcript;

- Require appellate counsel, as part of their review of the record, to review all sealed records that they are entitled to access under rule 8.45 and file an application to unseal any such records counsel determines no longer meet the criteria for sealing;
- Unless otherwise ordered by the court, require defendant's appellate counsel and the trial counsel from the prosecutor's office to confer regarding any request for corrections to the record and any application to unseal records served on the prosecutor's office; and
- Make other minor clarifying and conforming changes;

12. Repeal rule 8.625, which is obsolete;
13. Adopt new *Capital Case Attorney Pretrial Checklist* (form CR-600), *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), *Capital Case Attorney List of Jury Instructions* (form CR-604), and *Capital Case Attorney Trial Checklist* (form CR-605) for mandatory use by attorneys in complying with the requirements of rules 4.119 and 4.230; and
14. Refer to the appropriate Judicial Council advisory body or bodies for their consideration the suggestions received from commentators for additional substantive changes to the rules relating to the record on appeal that the working group was not able to consider at this time.

The text of the new and amended rules and the new forms are attached at pages 21–57.

Relevant Previous Council Action

Because Proposition 66 only recently went into effect, the Judicial Council has not yet adopted any rules under the act. The council has, however, previously adopted rules relating to the content and preparation of the record on appeal in death penalty (capital) cases. The original Rules on Appeal adopted by the Judicial Council effective July 1, 1943 contained a provision addressing the content of the record on appeal in a capital case, rule 33(c). Effective January 1, 1983, after the death penalty was reinstituted in California in 1977, this provision was moved to be a separate rule 39.5 specifically addressing the record in capital cases and rule 35, relating to preparation of the record in criminal appeals, was also amended to specifically address capital cases. Effective March 1, 1997, to implement amendments to Penal Code sections 190.8 and 190.9 that made substantial changes in the process for preparing the record on appeal in capital cases, the Judicial Council amended and renumbered rule 39.5 and adopted new rules 39.52 – 39.56. These rules have been amended and renumbered on several occasions since then and are now rules 8.610, 8.613, 8.616, 8.619, 8.622, and 8.625.

In January 2018, the Judicial Council formed the Proposition 66 Rules Working Group to assist it in carrying out its rule-making responsibilities under the proposition. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act's provisions.

Analysis/Rationale

Background

Proposition 66

On November 8, 2016, the California electorate approved Proposition 66, the Death Penalty Reform and Savings Act of 2016. This act made a variety of changes to the statutes relating to review of death penalty (capital) cases in the California courts, many of which were focused on reducing the time spent on this review. Among other things, the act calls for the Judicial Council to adopt, within 18 months of the act's effective date, "initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review." (Pen. Code, § 190.6(d).)

The act did not take effect immediately upon approval by the electorate because its constitutionality was challenged in a petition filed in the California Supreme Court, *Briggs v. Brown et al.* (S238309). On October 25, 2017, the Supreme Court's opinion in the *Briggs* case ((2017) 3 Cal.5th 808) became final and the act took effect. Shortly after this, as noted above, the Judicial Council formed the Proposition 66 Rules Working Group to assist it in carrying out its rule-making responsibilities under the act. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act's provisions, including, specifically, those governing the procedures and time frames pertaining to record preparation.

Existing record preparation procedures in capital cases

The existing procedures for the preparation of the record on appeal in capital cases are established by a combination of state statutes—Penal Code sections 190.7–190.9, which were not modified by the act—California Rules of Court, and practice. The statutes specifically provide for the adoption of rules by the Judicial Council to address record preparation in capital cases:

- Penal Code section 190.7 provides that the Judicial Council may adopt rules "specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced."
- Penal Code section 190.8, which addresses preparation and certification of the record in capital cases, provides that it "shall be implemented pursuant to rules of court adopted by the Judicial Council."

These statutes, rules, and practices address the content of the record and establish a multistep process for preparing and certifying the record in capital cases:

- ***Contents of the record.*** Penal Code section 190.7 generally requires that all papers or other records filed or lodged with the court and a transcript of all oral proceedings during both the pretrial and trial phases of a capital case must be included in the record on appeal. Rule 8.610 identifies the specific items and oral proceedings that must be included in the clerk's and

reporter's transcripts in capital cases and addresses the format of the record. To ensure that transcripts of all of the oral proceedings are available, Penal Code section 190.9 requires that "in any case in which a death sentence may be imposed, all proceedings conducted in the superior court, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present." This section further requires the court to "assign a court reporter who uses computer-aided transcription equipment" to report these proceedings and requires that the court reporter "prepare and certify a daily transcript of all proceedings commencing with the preliminary hearing."

- ***Record of pretrial proceedings.*** Penal Code section 190.9 requires that when the prosecution notifies the trial court that the death penalty is being sought, the court must order the preparation of the record of all the pretrial proceedings. Unless an extension of time is granted, the court is required to certify this record no later than 120 days following the prosecution's notification. Rule 8.613 implements this statutory procedure by, among other things, requiring counsel representing the parties during the pretrial proceedings to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. If any corrections or additions are requested, the court is required to hold a hearing, make the necessary changes, and certify this record of the preliminary proceedings as complete and accurate. This record is later incorporated in the full record when the record of the trial proceedings is completed.
- ***Certification of the record for completeness.*** If, following the trial, a death sentence is imposed, Penal Code section 190.8 requires that, within 30 days of the imposition of that sentence, the clerk of the superior court must provide trial counsel with copies of the clerk's and reporter's transcripts of the proceedings. Trial counsel are required to certify that they have "reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported and that have occurred in the course of the case in any court, as well as all documents required by this code and the rules adopted by the Judicial Council." The trial court is required to hold "one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention." Rules 8.616 and 8.619 implement this statutory procedure by, among other things, requiring a procedure similar to that for the review of the record of the preliminary proceedings: trial counsel are required to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. Unless an extension of time is granted, the court is required to certify the record for completeness no later than 90 days after imposition of the death sentence.
- ***Certification of the record for accuracy.*** Penal Code section 190.8 provides that when appellate counsel for the defendant is retained or appointed, the trial court is required to send a copy of the record that was certified for completeness to that appellate counsel. The trial court may hold "one or more status conferences for purposes of timely certification of the record for accuracy, as set forth in the rules of court adopted by the Judicial Council." Rule 8.622 implements this statutory procedure by, among other things, providing that within 90 days after the clerk delivers the record to appellate counsel, any party may request that the

court make corrections or additions to the record and that, if such a request is made, the procedures for the court's consideration are the same as for certifying the record for completeness. Unless an extension of time is granted, the court is required to certify the record for accuracy no later than 120 days after the record was delivered to appellate counsel.

- ***Review of the record by Supreme Court staff.*** Rule 8.622 provides that when the record is certified as accurate, the clerk must promptly send the original to the Supreme Court. Staff in the Supreme Court clerk's office review the record to ensure that it is complete before it is accepted for filing.

Currently, the record on appeal in capital cases is not typically filed in the Supreme Court until approximately six years after the sentence of death is imposed. Close to two-thirds of this time elapses between the imposition of the death sentence and the appointment of appellate counsel for capital defendants. As noted above, by statute the certification of the record for accuracy occurs only after appellate counsel is appointed, so the record preparation process does not move forward until that appointment takes place. However, approximately one-third of this time, or, on average, approximately two years, elapses between the appointment of appellate counsel and the filing of the record. This is the period when the record is being reviewed and certified for accuracy and reviewed by the Supreme Court clerk's office prior to filing. In the experience of working group members, a substantial number of errors and omissions are identified and need to be corrected during these later two stages of the record preparation process. It is also the experience of working group members that it is often more difficult to identify errors or omissions and make necessary corrections and additions at these later stages because many years have typically elapsed since the proceedings in the trial court took place. Memories have faded and the judges, attorneys, court reporters, and court staff who participated in the proceedings may no longer be available.

Recommended rules and forms

Premises of recommended changes

The changes recommended in this report are based on two main premises:

- It is more efficient for necessary items to be identified and included in the record from the outset, rather than having to later identify that these items are missing and have counsel request their inclusion in the record and the court consider whether to grant this request; and
- Counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and include necessary items in the record, and to identify and correct errors in the record.

The rule changes and forms recommended in this report reflect these premises. They are designed to help trial counsel and the trial court identify items that need to be included in the record and to make necessary corrections as early as possible during the record preparation and certification process.

Facilitating preparation of a complete and accurate record during the pretrial and trial proceedings

The working group is proposing the adoption of two new rules of court – rules 4.119 and 4.230 – and six forms designed to facilitate the preparation of a complete and accurate record while the pretrial and trial proceedings are taking place. The main provisions of these proposed rules and forms are modeled on Superior Court of Los Angeles County local rule 8.40 and Appendix 8.A, which address record preparation in capital cases. This local rule requires counsel in capital cases to prepare lists of appearances, exhibits, motions, and jury instructions. The appendix to the Los Angeles local rule also includes a checklist, divided by phase of the capital proceedings, which restates the requirements that counsel prepare lists of appearances, exhibits, motions, and jury instructions, as well as other requirements relating to capital case record preparation from applicable statutes and California Rules of Court. Counsel are required to sign the checklist and submit it to the court. In addition, the appendix includes model logs and lists for use by counsel in complying with the local rule requirements. The working group concluded that these local procedures provided a good model for steps that can be taken on a statewide basis to better ensure the completeness and accuracy of the record early in the record preparation and certification process.

Checklists. To provide counsel with a reminder of their many record-related obligations in a capital case, new rules 4.119 and 4.230 of the California Rules of Court, like the Superior Court of Los Angeles County local rule, would require defense counsel and prosecutors, soon after they make their first appearance at the pretrial or trial stages in a case in which the death penalty might be imposed, to sign and submit to the court a checklist of these obligations. The proposed new rules would be placed in Title 4 of the California Rules of Court, the Criminal Rules, because they address counsel's responsibilities during the trial court proceedings.

Two new mandatory forms, *Capital Case Attorney Pretrial Checklist* (form CR-600) and *Capital Case Attorney Trial Checklist* (form CR-605), are being recommended for adoption to provide counsel with the required checklists. Separate forms are proposed for pretrial and trial proceedings because there are differences in the underlying procedures for preparation of the record in pretrial and trial proceedings that are reflected on the forms, and because the pretrial information would need to be submitted at a much earlier time in the record preparation process. Obligations noted on the proposed forms include reviewing and correcting daily transcripts, ensuring that all exhibits offered are properly marked, complying with rule 2.1040 relating to electronic audio or audio and visual recordings presented to the jury, and preparing and submitting lists of appearances, exhibits, motions, and jury instructions (discussed below).

Lists of appearances, exhibits, motions, and jury instructions. To provide a helpful cross-check to the court minutes and docket in identifying documents and oral proceedings that need to be included in the record on appeal in capital cases, proposed new rules 4.119 and 4.230, like the Superior Court of Los Angeles County local rule, would require counsel—during both the pretrial and trial stages in a case in which the death penalty might be imposed—to prepare lists of all the court appearances and motions that they make and all the exhibits they offer and, at the

trial stage, jury instructions that they offer. By preparing these lists during the course of the proceedings, most of the documents and oral proceedings that are required to be included in the record on appeal will have been identified and can be included when the record is initially prepared and reviewed. Proposed new mandatory forms *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) would be used by counsel to comply with these requirements.

The pretrial lists of appearances, exhibits, and motions would be required to be submitted to the court and served on opposing counsel within 21 days after the clerk sends notice to begin preparing the record. For the trial lists of appearances, exhibits, motions, and jury instructions, the deadline for submission to the court would be 21 days after imposition of the death judgment. These deadlines are designed to allow the court and counsel to use the lists when they are preparing and reviewing the record shortly after the proceedings take place, allowing early corrections or additions to the record.

Review of daily transcripts. As noted above, by statute, daily reporter's transcripts are prepared during capital trials. Trial counsel is required to identify errors in these daily transcripts during the trial proceedings. Penal Code section 190.8(c) provides:

> During the course of a trial in which the death penalty is being sought, trial counsel shall alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the ordinary course of trial preparation. The court shall periodically request that trial counsel provide a list of errors in the trial transcript during the course of trial and may hold hearings in connection therewith.
>
> Corrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion.

Currently, rule 8.619(a), regarding certifying the trial record for completeness, includes the following language that is designed to implement this statutory requirement:

> During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

Because this provision addresses a procedure that takes place during the trial of a capital case, the working group is recommending that this provision be moved from rule 8.619 and incorporated into proposed new rule 4.230. The working group is also recommending adding a new sentence calling attention to Penal Code section 190.8(c)'s provision regarding immaterial typographical errors by providing that such errors need not to be brought to the attention of the court.

Electronic recordings and other audio or visual aids. Existing rule 2.1040 generally requires that before a party may present or offer into evidence any electronic sound or sound-and-video recording, the party must provide the court and opposing parties with a transcript of the electronic recording and, except when the recording is of a deposition or other prior testimony, must also provide opposing parties with a duplicate of the electronic recording. Rule 8.610, relating to the contents of the record on appeal in capital cases, requires that the clerk's transcript include any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040. In the experience of members of the working group, however, counsel sometimes fail to provide the required transcripts of these recordings. To better ensure that the required transcripts are provided and included in the record on appeal, the working group is recommending that new rules 4.119 and 4.230 include provisions reminding counsel that they must comply with the requirements of rule 2.1040, including when any such recordings are made part of a digital or electronic presentation. This obligation is also noted on proposed new forms CR-600 and CR-605.

In addition, to better ensure that the court has a complete record of the material presented to the jury in capital cases, the working group is recommending that new rule 4.230 include a provision requiring primary counsel to provide the clerk with copies of any audio or visual aids that are not otherwise subject to the requirements of rule 2.1040 that are used during jury selection or in presentations to the jury. In the experience of working group members, this material is often needed for appellate review and, if not initially included in the record, must be added through an augmentation request. If a visual aid is oversized, counsel would be required to provide a photograph of that visual aid; and for digital or electronic presentations, counsel would be required to supply both a copy of the presentation in its native format and printouts showing the full text of each slide or image.

Contents of the clerk's transcript

As noted above, Penal Code section 190.7 generally requires that all papers or other records filed or lodged with the courts and a transcript of all oral proceedings during either the pretrial or trial phase of a capital case must be included in the record on appeal. Rule 8.610 identifies the specific items that must be included in the clerk's transcript in capital cases.

The working group is recommending two sets of rule amendments to better ensure that items needed for appellate review are included in the clerk's transcript.

Rule 8.610(a)(1)'s list of items in the clerk's transcript. The working group identified a number of items that are needed for appellate review that are frequently left out of the clerk's transcript, resulting in the need for either additions during the record correction process or augmentation motions during the Supreme Court proceedings. To address this, the working group recommends several additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript. Recommended additions to this list include:

- Court-ordered diagnostic or psychological reports required under Penal Code section 1369, which are specifically required to be included in the record under rule 8.320 in defendant's appeals in other felony cases;
- Visual aids provided to the clerk under proposed new rule 4.230;
- The table correlating juror's names and identifying numbers; and
- Documents filed or lodged under Penal Code sections 987.9 or 987.2.

Documentary exhibits. Currently, under rule 8.610(a)(3) in capital cases, as well as under rule 8.320(e) in non-capital felony cases, all exhibits are considered part of the record on appeal, but these exhibits are not included in the clerk's transcript and may only be transmitted to the court at the time oral argument is set. Because this occurs after all briefing is completed, it is sometimes difficult for counsel to cite to these exhibits in their briefs, and it may also make it more difficult for the court to identify exhibits that are being cited.

To address this, the working group is recommending that rule 8.622 be amended to provide that, at the time the record is reviewed for accuracy, counsel may request that copies of particular documentary exhibits be included in the clerk's transcript. The recommended amendment also requires counsel to provide a reason that the document should be included in the clerk's transcript. This is intended to allow those documentary exhibits that are needed for appellate review to be included in the clerk's transcript prior to briefing.

The working group was split almost evenly about whether this was the approach that should be recommended with respect to documentary exhibits. Many members favored a different approach of including all documentary exhibits in the clerk's transcript without counsel being required to request or provide a reason for this. Three main reasons were given for this view: Appellate counsel need to review all exhibits to determine which are relevant to the issues on appeal, so it is more efficient simply to include these exhibits in the clerk's transcript. It will be difficult for counsel to determine which exhibits are relevant to the issues on appeal at the record review stage, thus allowing counsel to request additions to the clerk's transcript at this stage will not fully address the problem. Including all exhibits in the record on appeal will ultimately improve the efficiency of the record review process for state habeas corpus counsel. Three main reasons were given by those who favored requiring counsel to submit a request and state reasons for including documentary exhibits in the clerk's transcript. Not all documentary exhibits will be relevant to the issues raised on appeal and do not need to be in the clerk's transcript. Including items not needed for the appeal will unnecessarily increase costs for trial courts associated with preparing and copying the clerk's transcript and the costs for the Supreme Court is storing these records. With the addition of all documentary exhibits, a clerk's transcript may become so long as to unnecessarily trigger automatic extensions of the time to review, correct, and certify the record and to prepare briefs.

In a vote taken after reviewing the public comments on the proposal, eight members of the working group ranked the approach of requiring counsel to submit a request and state reasons for

including documentary exhibits in the clerk's transcript as their first choice among three options; eight members selected as their first choice the option of requiring that all documentary exhibits be included in the clerk's transcript without counsel being required to request or provide a reason for this; and five members selected a third, middle option as their first choice. The tie between the first and second approaches was resolved using a rank-order voting process that considered that four of the five members who had selected the third option as their first choice, ranked as their second choice the approach of requiring counsel to submit a request and state reasons for including documentary exhibits in the clerk's transcript.

Given the split among working group members on this issue, the staff anticipates that the group will further consider other ways to potentially address at least one of concerns that resulted in this split – how best to facilitate state habeas corpus counsel's access to exhibits.

Record review and certification process

The working group is also proposing several change to the existing rules relating to the review and certification of the record of the preliminary and trial proceedings in capital cases.

Requirement that counsel confer during record correction process. Rule 8.613 regarding the certification of the record of the preliminary proceedings, rule 8.619 regarding certification of the record for completeness, and rule 8.622 regarding certification of the record for accuracy all currently contain provisions requiring counsel to consult with opposing counsel during these record correction processes. The working group is recommending that these provisions be amended to provide that counsel must confer about any errors in or omissions from the record that they identified during their review and also to set specific timeframes within which this must be done. The recommended timeframes vary slightly, but all are designed to provide counsel with an opportunity to reach agreement regarding corrections or additions to the record before the court holds its hearing to certify the record. Under rules 8.613 and 8.619, counsel would be required to confer before a request for corrections or additions was filed. Under rule 8.622, counsel would be required to confer after a request for corrections or additions was filed.

Immaterial errors. The working group is recommending amending the provisions in rules 8.613, 8.619, and 8.622 that address counsel's review of the record to add a sentence similar to that in proposed new rule 4.230 that would provide that immaterial typographical errors that cannot conceivably cause confusion do not need to be brought to the attention of the court.

Deadlines for review and certification. Currently, consistent with Penal Code section 190.8, rules 8.619 and 8.622 include provisions allowing for extension of the deadlines relating to review and certification of the record for completeness and accuracy. Both of these provisions permit extensions of time when the combined clerk's and reporter's transcripts exceed 10,000 pages and provide for a specified number of additional days for each specified number of additional pages of total record over 10,000 pages. The working group recommends that these extensions based on the record size instead be built into the deadlines without the need for making a request. This would save time and resources for both counsel, who would otherwise

need to prepare a request for an extension of time, and the courts, which would otherwise need to consider these requests.

The working group also recommends that the deadline for the trial judge to certify the record be measured from counsel's submission of a request for corrections or additions, rather than being measured from the imposition of the death sentence or the transmission of the record to appellate counsel. Under the current rule structure, the court's certification deadline does not take into account any extension of counsel's timeframes for reviewing or requesting corrections or additions to the record. Without this change, if timeframes for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel have completed their review of these transcripts. This would necessitate the trial judge taking time out of his or her substantive work to request an extension of time to certify the record and for the court to rule on this request.

Review of sealed records. The working group recommends that rule 8.622 be amended to provide that, at the time appellate counsel review the record for accuracy, they also consider all the sealed records that they are entitled to access to determine whether there are records that no longer need to be sealed. Ordinarily, under rule 8.46, requests to unseal such records would need to be filed in the reviewing court. This proposal would allow such requests in capital cases to be filed in and considered by the trial court. Identifying records that can be unsealed would simplify preparation of the final record on appeal and also simplify the briefing involving such records.

Other proposed changes

Moving record-related provisions from rule 8.600 to new rule 8.608. Rule 8.600 contains general provisions relating to appeals in capital cases. Currently this rule contains several provisions that relate to preparation of the record on appeal. The working group recommends that these provisions be moved from rule 8.600 to new rule 8.608 so that they are within the article of the Appellate Rules containing the other rules regarding the record in capital appeals.

New rule regarding juror-identifying information. Rule 8.610(c) currently contemplates that courts will comply with the requirements of rule 8.332, which address the removal of juror-identifying information from the record on appeal in noncapital felony cases. However, rule 8.332 does not clearly apply in capital cases. To prevent any confusion, the working group recommends the adoption of new rule 8.611, which would specifically address the removal of juror-identifying information in the record on appeal in capital cases.

Repeal of rule 8.625. Rule 8.625 addresses the certification of the record in capital cases in which the judgment of death was imposed after a trial that began before January 1, 1997. The record on appeal in all cases that meet this criterion has already been prepared, so this rule is no longer needed. The working group is therefore proposing that this rule be repealed.

Policy implications

As noted above, Proposition 66 calls for the Judicial Council to adopt "rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review." (Pen. Code, § 190.6(d).) To help fulfill this statutory requirement, in the context of considering the preparation of the record on appeal in capital cases, the working group tried to identify areas where the record preparation process could be made more efficient and thus could potentially expedite the overall capital case review process. In this regard, as also noted above, the working group took as its two main premises:

- It is more efficient for necessary items to be identified and included in the record from the outset, rather than having to later identify that these items are missing and have counsel request their inclusion in the record and the court consider whether to grant this request; and
- Counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and include necessary items in the record, and to identify and correct errors in the record.

The elements of the recommended rules that are designed to facilitate the increased involvement of trial counsel in the preparation of the record during the preliminary and trial proceedings—including the checklists and lists of appearances, exhibits, motions, and jury instructions—and the requirement to confer with opposing counsel during the record review process will have policy implications in terms of imposing new responsibilities on many counsel and requiring cultural shifts in some counties. The elements of the recommended rules that clarify what materials must be included in the clerk's transcript or that potentially add items to this transcript have policy implications for courts in terms of potentially imposing new costs on trial courts that are not currently including these items in this transcript. In making its recommendations, the working group tried to weigh these policy implications against the potential efficiency and time gains that it concluded would likely result from these changes.

Comments

This proposal was circulated for public comment in a special cycle between July 3 and July 23, 2018. It was distributed to the standard list of presiding judges and justices, court executive officers, and bar associations. Working group members were also asked to distribute it to all those whom they thought might be interested in commenting.

Thirteen individuals or organizations submitted comments, including four superior courts, five organizations or individuals that represent criminal defendants, one attorney from a prosecutor's office, and one victims' rights organization. Four commenters indicated that they agreed with the proposal, four indicated that they agreed with the proposal if modified, and the remainder did not specify an overall position on the proposal, but provided comments. Many commenters agreed with parts of the proposal and disagreed with or suggested modifications to other parts.

The full text of the comments and the working group responses is in the comment chart attached at pages 58-121. The chart begins with a list of the 13 individuals and entities that submitted comments. This is followed by tables containing the substantive comments organized by rule and form number and/or topic. The main substantive comments and the working group responses to these comments are discussed below.

Attorney pretrial and trial checklists

Several commenters suggested that these checklists should be informational only and some of the comments seemed to express confusion about when the checklists are supposed be completed and filed and how they might be used by the court. The working group intended these checklists to be primarily informational tools to help remind counsel as early as possible in the case of their responsibilities relating to record preparation and encourage them to fulfill these responsibilities. In response to the public comments, the working group made several changes to the rules and forms to clarify this purpose, including:

- Replacing the heading on the right-hand column which, as circulated, indicated that the column was "for court use," with a heading identifying the column as for optional use by the attorney;
- Adding a line above the signature indicating that the attorney is acknowledging having reviewed the form; and
- Revising the instructions at the top of the forms to reflect these changes.

Pretrial and trial lists of appearances, exhibits, motions, and jury instructions

As circulated for public comment, forms CR-601, CR-602, CR-603, and CR-604 were proposed as optional forms that attorneys could use to prepare the required pretrial and trial lists of appearances, exhibits, motions, and jury instructions. The invitation to comment specifically sought comment on whether these forms should instead be mandatory. Several commenters suggested that these be mandatory. In response to these comments, the working group is recommending that these be adopted as mandatory Judicial Council forms.

Several commenters also raised specific objections to the proposed list of attorney appearances, viewing it as redundant to the court minutes and docket entries. The working group considered these comments, but it concluded that the attorney lists of appearances will be a helpful cross-check for the court minutes and docket entries, and therefore is still recommending both the rule requirements to prepare this list and the adoption of CR-601.

Some commenters made comments or suggestions about when these forms should be completed and submitted to the court. It is the working group's intent that these forms be completed as the proceedings take place—i.e., that appearances be added to the list as they are made, etc. To clarify this intent, the working group added comments to rules 4.119 and 4.230 addressing this.

Clerk notice to submit lists of appearances, exhibits, motions, and jury instructions

As noted above, under proposed amendments to rules 8.613 and 8.616, the trial court clerk would be required to notify pretrial and trial counsel of their obligation to submit the required lists of appearances, exhibits, motions, and jury instructions. The invitation to comment specifically asked for input on whether the clerk should be required to send this notice. The comments on this issue were split. The working group considered all of these comments and decided to keep the requirement that the clerk provide this notice in the proposal. Under the existing procedures in rule 4.116 for preparation of the record of the preliminary proceedings, it is the clerk that triggers the preparation of the record after being notified that the prosecution is seeking the death penalty. The working group's view is that this is also the appropriate time for counsel to submit the pretrial lists of appearances, exhibits and motions and that it makes sense for the clerk to notify counsel of this obligation when the clerk notifies the court reporters. For simplicity and consistency between this phase of the record preparation process and the preparation of the record of the trial, the working group also concluded that it was appropriate for the clerk to notify counsel of their obligation to submit the trial lists of lists of appearances, exhibits, motions, and jury instructions.

Contents of the record - copies of visual aids

Several commenters provided input on the proposal to amend rule 8.610 to include in the clerk's transcript visual aids used in presentations to the jury. Some of these commenters suggested that these visual aids should not be included in the clerk's transcript if they are not exhibits or marked for identification. The majority of commenters, however, supported the concept of including this material in the clerk's transcript, but suggested adding language to clarify what types of digital and electronic presentations to the jury were meant to be encompassed within this requirement and in what format they would be included in the clerk's transcript. In response to these comments, as well as to issues raised by members of the working group during the discussion of these comments, the working group made several changes to the proposed amendments to rule 8.610, as well as to proposed new rules 4.119 and 4.230, including:

- Modifying the provisions in both rules 4.119 and 4.230 reminding counsel that they must comply with the requirements of rule 2.1040 to clarify that these requirements apply to electronic recordings that are included in electronic or digital presentations;
- Further modifying the provision in rule 4.230 requiring parties to provide the court with copies of visual aids used in presentations to the jury to clarify that:
    - This provision does not apply to items already covered by rule 2.1040;
    - It applies to audio as well as visual aids;
    - It applies to presentations made during the jury selection process; and
    - Photographs or printouts provided to the court must be on 8 ½ by 11 inch paper.
- Modifying the proposed amendment to rule 8.610 to cross-reference the provision in proposed new rule 4.230 requiring parties to provide the court with copies of visual aids.

One commenter noted that this provision in proposed new rule 4.230 would require that the parties provide the court with both copies of electronic or digital presentations in their native format and copies of all slides and images, but the amendments to rule 8.610 would only require that the copies of the slides and images be included in the clerk's transcript. This commenter suggested that the electronic or digital presentation in its native format be included in the clerk's transcript. The working group recognized this as an issue that should be considered, but concluded that it did not have time before presenting its recommendations to the Judicial Council to develop and circulate such a proposal for public comment. The working group therefore recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.

Contents of the record - inclusion of documentary exhibits in the clerk's transcript

This topic received quite a few comments; and the commenter's views, like those of the working group members discussed above, were split between those that supported automatically including all documentary exhibits in the clerk's transcript without requiring counsel to provide a reason for their inclusion and those that supported requiring counsel to provide a reason for their inclusion. The commentators supporting the former were primarily defense counsel, and those supporting the latter were primarily trial courts. The arguments made by these commenters were also consistent with the reasons given by working group members for their support of these two alternatives. Arguments made by commenters in support of automatically including documentary exhibits in the clerk's transcript included:

- It is more efficient to simply include the exhibits rather than requiring counsel to make a request and the court to rule on such a request;
- Counsel will need to review all the exhibits in preparing the appeal, so these items should be included in the clerk's transcript from the outset; and
- Including all the documentary exhibits in the clerk's transcript will make the preparation of state and federal habeas corpus petitions more efficient because counsel will not have to hunt for and gather these exhibits.

Most of the commenters who supported requiring a justification for including documentary exhibits in the clerk's transcript generally did not articulate the reasons for this view. The main reason given by the commenter who did discuss this is that enlarging the record increases costs for the trial court.

As related above, the working group was so split on which alternative to recommend that a tie-breaking system had to be used to decide that the working group would recommend the proposal as circulated for public comment.

Meet and confer requirements

As circulated for public comment, the proposal would have required counsel to meet and confer, in person or by telephone, during the record correction process. Several commenters objected to requiring opposing counsel to meet and confer for record correction, particularly immediately

following the imposition of a death sentence. Some also suggested that the rules should permit any meet and confer to be done electronically.

Although these commenters raised legitimate issues about the ability of counsel to review the record and act in a cooperative manner immediately following sentencing, that timing is required under the record preparation statutes. The working group's view is that this statutorily required record correction process will be most effective if counsel discuss potential errors in the record and necessary corrections. Therefore, the working group did not completely eliminate this element from its proposal, but modified it to eliminate the requirement that counsel meet in person or by phone, requiring only that they confer. This will allow counsel to determine the best way to communicate with opposing counsel – in person, by phone, or by some other electronic means.

Joint statements and requests for corrections

As circulated for public comment, the proposal would have encouraged opposing counsel to file joint statements indicating that no corrections to the record are needed or requests for corrections. Specific input was sought on whether joint statements or requests for corrections should be mandatory. Commenters did not support making this mandatory and some objected to even urging the filing of joint statements or requests. Based on these comments, the working group modified the proposal language to more neutrally indicate that joint statements or requests may be filed.

Time for implementation

The proposal that was circulated for public comment indicated that the proposed effective date of the rule and form changes was January 1, 2019. Two commenters suggested that the 3 months between the September Judicial Council meeting and January 1 was not enough time for implementing these changes. Based on these comments, the working group recommends that the effective date of the recommended rules and forms be April 25, 2019. This will give courts and justice system partners approximately 7 months to implement these changes.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the working group considered not proposing any changes to the rules relating to preparation of the record on appeal in capital cases, but concluded that it would help fulfill the Judicial Council's rule-making obligations under Proposition 66 to propose rule changes that might improve the efficiency of this procedure.

The working group also considered whether guidelines, best practices, or additional education or training for judicial officers, court staff, or counsel might be a substitute for some or all of the proposed rule changes or forms. The working group concluded, however, that these other approaches would be helpful supplements to the proposed rule changes and forms, but would not be a substitute for them.

The working group considered a number of different options for specific rule and form language when it was developing this proposal, including the following:

- *Making the use of a checklist optional or having an informational form, rather than making the submission of the form mandatory.* The working group concluded that a mandatory checklist would be most effective in ensuring that trial counsel are fully informed of their record preparation obligations.
- *Making the preparation and submission of lists of appearances, exhibits, motions, and jury instructions optional rather than mandatory.* The working group concluded that making these lists mandatory would be most effective in facilitating the preparation of a complete and accurate record.
- *Not including a requirement for a list of jury instructions.* The working group considered relying on the jury instruction cover sheet that rule 2.1055 requires, rather than requiring counsel to submit prepare a list of written jury instructions submitted to the court. The working group concluded that preparation of this list would be beneficial as a way to cross-check that all cover sheets have been submitted and are complete.
- *Not requiring counsel to confer at some or all of the record certification stages.* The working group concluded that such discussions would likely facilitate reaching agreement on needed corrections and additions to the record and so decided to include these requirements at all stages of the record certification process.

Fiscal and Operational Impacts

These recommended rule changes and forms relating to the record on appeal in capital cases are likely to require some initial training for judicial officers and court staff. This was noted by one of the superior courts that commented on the proposal. These changes will impose new requirements on trial counsel from counties other than Los Angeles in terms of preparing and submitting the required checklists and lists of appearances, exhibits, motions, and jury instructions. The Los Angeles County Public Defender's office commented that implementation of these rules will require significant training of the courts, court staff and lawyers. However, it is anticipated that these rule changes and forms will reduce court and counsel costs in the long term by making the record preparation process in capital cases more efficient.

Attachments and Links

1. Cal. Rules of Court, rules 4.119, 4.230, 8.600, 8.608, 8.610, 8.611, 8.613, 8.616, 8.619, 8.622, and 8.625, at pages 21–43
2. Forms CR-600, CR-601, CR-602, CR-603, CR-604 and CR-605, at pages 44–57
3. Chart of comments, at pages 58–121
4. Link A: *Ballot description and arguments for and against Proposition 66 and text of proposition from November 2016* Official Voter Information Guide*, beginning on pages 104 and 212, respectively, of linked document*

Rules 4.119, 4.230, 8.608, and 8.611 of the California Rules of Court are adopted; rules 8.600, 8.610, 8.613, 8.616, 8.619, and 8.622 are amended; and rule 8.625 is repealed, effective April 25, 2019, to read:

Title 4. Criminal Rules

Division 2. Pretrial

Chapter 1. Pretrial Proceedings

Rule 4.119. Additional requirements in pretrial proceedings in capital cases

(a) Application

This rule applies only in pretrial proceedings in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed *Capital Case Attorney Pretrial Checklist* (form CR-600) by signing and submitting this form to the court. Counsel is encouraged to keep a copy of this checklist.

(c) Lists of appearances, exhibits, and motions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(C):

(A) A list of all appearances made by that party during the pretrial proceedings. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances, the date of each appearance, the department in which it was made, the name of counsel making the appearance, and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.

(B) A list of all exhibits offered by that party during the pretrial proceedings. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party during the pretrial proceedings, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution.

(2) In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved.

(3) No later than 21 days after the clerk notifies trial counsel that it must submit the lists to the court, counsel must submit the lists to the court and serve a copy of all the lists except the list of Penal Code section 987.9 appearances on all parties. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(d) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are made part of a digital or electronic presentation.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney Pretrial Checklist* (form CR-600) is designed to be a tool to assist pretrial counsel in identifying and fulfilling all their record preparation responsibilities. Counsel are therefore encouraged to keep a copy of this form and to use it to monitor their own progress.

Subdivision (c)(1). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made or exhibits offered.

Subdivision (c)(3). Rule 8.613(d) requires the clerk to notify counsel to submit the lists of appearances, exhibits, and motions.

Division 3. Trials

Rule 4.230. Additional requirements in capital cases

(a) Application

This rule applies only in trials in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed *Capital Case Attorney Trial Checklist* (form CR-605) by signing and submitting this form to the court. Counsel is encouraged to keep a copy of this checklist.

(c) Review of daily transcripts by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the daily transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention.

(d) Lists of appearances, exhibits, motions, and jury instructions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(D).

(A) A list of all appearances made by that party. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances, the date of each appearance, the department in which it was made, the name of counsel making the appearance, and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant. In the event of any substitution of attorney at any stage of the case, the relieved attorney must provide the list of all appearances to substituting counsel within five days of being relieved.

(B) A list of all exhibits offered by that party. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose.

(D) A list of all jury instructions submitted in writing by that party. *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used for

this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn.

(2) No later than 21 days after the imposition of a sentence of death, counsel must submit the lists to the court and serve a copy of all the lists except the list of Penal Code section 987.9 appearances on all parties. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(e) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are made part of a digital or electronic presentation.

(f) Copies of audio and visual aids

Primary counsel must provide the clerk with copies of any audio or visual aids not otherwise subject to the requirements of (e) that are used during jury selection or in presentations to the jury, including digital or electronic presentations. If a visual aid is oversized, a photograph of that visual aid must be provided in place of the original. For digital or electronic presentations, counsel must supply both a copy of the presentation in its native format and printouts showing the full text of each slide or image. Photographs and printouts provided under this subdivision must be on 8 ½ by 11 inch paper.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) may be used to comply with the requirements in this subdivision.

Subdivision (d). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made, exhibits offered, or jury instructions submitted.

Title 8. Appellate Rules

Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus Proceedings

Chapter ~~10~~1. Automatic Appeals From Judgments of Death

Article 1. General Provisions

Rule 8.600. In general

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

~~**(c) Extensions of time**~~

~~When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.~~

~~**(d) Supervising preparation of record**~~

~~The clerk/executive officer of the Supreme Court, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.~~

(e) Definitions

For purposes of this part~~:~~

~~(1) The delivery date of a transcript sent by mail is the mailing date plus five days; and~~

~~(2)~~ "Trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

Article 2. Record on Appeal

Rule 8.608. General provisions

(a) Supervising preparation of record

The clerk/executive officer of the Supreme Court, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this article. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(b) Extensions of time

When a rule in this article authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.

(c) Delivery date

The delivery date of a transcript sent by mail is the mailing date plus five days.

Rule 8.610. Contents and form of the record

(a) Contents of the record

(1) The record must include a clerk's transcript containing:

(A) The accusatory pleading and any amendment.

(B) Any demurrer or other plea.

(C) All court minutes.

(D) All instructions submitted in writing~~, each one~~ and the cover page required by rule 2.1055(b)(2) indicating the party requesting ~~it~~ each instruction, and any written jury instructions given by the court.

(E) Any written communication, including printouts of any e-mail or text messages and their attachments, between the court and the parties, the jury, or any individual juror or prospective juror.

(F) Any verdict.

(G) Any written opinion of the court.

(H) The judgment or order appealed from and any abstract of judgment or commitment.

(I) Any motion for new trial, with supporting and opposing memoranda and attachments.

(J) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040, including witness statements.

(K) Any application for additional record and any order on the application.

(L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments.

(M) If related to a motion under (L), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing.

(N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term.

(O) The probation officer's report. ~~and~~

(P) Any court-ordered diagnostic or psychological report required under Penal Code section 1369.

(Q) Any copies of visual aids provided to the clerk under rule 4.230(f). If a visual aid is oversized, a photograph of that visual aid must be included in place of the original. For digital or electronic presentations, printouts showing the full text of each slide or image must be included.

(R) Each juror questionnaire, whether or not the juror was selected.

(S) The table correlating the jurors' names with their identifying numbers required by rule 8.611.

(T) The register of actions.

(U) All documents filed under Penal Code section 987.9 or 987.2.

~~(P)~~(V) Any other document filed or lodged in the case~~, including each juror questionnaire, whether or not the juror was selected~~.

(2) The record must include a reporter's transcript containing:

(A) The oral proceedings on the entry of any plea other than a not guilty plea;

(B) The oral proceedings on any motion in limine;

(C) The voir dire examination of jurors;

(D) Any opening statement;

(E) The oral proceedings at trial;

(F) All instructions given orally;

(G) Any oral communication between the court and the jury or any individual juror;

(H) Any oral opinion of the court;

(I) The oral proceedings on any motion for new trial;

(J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;

(K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;

(L) The closing arguments;

(M) Any comment on the evidence by the court to the jury;

(N) The oral proceedings on motions in addition to those listed above; and

(O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but, except as provided in rule 8.622, may be transmitted to the reviewing court only as provided in rule 8.634.

(4) The superior court or the Supreme Court may order that the record include additional material.

(b) Sealed and confidential records

Rules 8.45–8.47 govern sealed and confidential records in appeals under this chapter.

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule ~~8.332~~ 8.611. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together if filed in paper form, must be included in the record sent to the Supreme Court.

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rules 8.45–8.47, relating to sealed and confidential records, and rule 8.144.

Advisory Committee Comment

Subdivision (a). Subdivision (a) ~~restates~~ implements Penal Code section 190.7(a).

Subdivision (b). The clerk's and reporter's transcripts may contain records that are sealed or confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the format, labeling, and transmission of and access to such records. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and expert funding requests (Pen. Code, §§ 987.2 and 987.9; *Puett v. Superior Court* (1979) 96 Cal.App.3d 936, 940, fn. 2; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Rule 8.611. Juror-identifying information

(a) Application

A clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Advisory Committee Comment

Rule 8.611 implements Code of Civil Procedure section 237.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a) – (c) * * *

(d) Notice to prepare transcript and lists

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must do the following:

(1) Notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(2) Notify trial counsel to submit the lists of appearances, exhibits, and motions required by rule 4.119.

(e) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original transcript and the lists of appearances, exhibits, and motions required by rule 4.119 to the designated judge and one copy of the transcript and each list required by rule 4.119 that is not required to be sealed to each trial counsel. If a different attorney represented the defendant or the People in the preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any ~~for~~ errors or omissions in the transcript;

(B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and

~~(C) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and~~

~~(D)~~(C) Review the court file to determine whether it is complete.

(3) Within 21 days after the clerk delivers the transcript and lists under (1), trial counsel must confer regarding any errors or omissions in the reporter's transcript or court file identified by trial counsel during the review required under (2) and determine whether any other proceedings or discussions should have been transcribed.

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file:

(A) A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (f), including conferring with opposing counsel; and

(B) ~~must serve and file~~ Either:

~~(A)~~(i) A request for corrections or additions to the reporter's transcript or court file. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention; or

~~(B)~~(ii) A statement that counsel does not request any corrections or additions.

(C) The requirements of (B) may be satisfied by a joint statement or request filed by counsel for all parties.

(2) – (4) * * *

(h) * * *

(i) Transcript delivered in electronic form

(1) – (2) * * *

(3) A copy of a sealed or confidential transcript delivered in electronic form must be ~~placed on a~~ separated ~~disk~~ from any other transcripts and ~~clearly~~ labeled as ~~confidential~~ required by rule 8.45.

(4) – (5) * * *

(j) Delivery to the superior court

Within five days after the reporter delivers the copies in electronic form, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) The certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel~~, including the copies in electronic form~~; and

(2) The complete court file of the preliminary proceedings or a certified copy of that file.

(k) * * *

(*l*) Notice that the death penalty is no longer sought

After the ~~presiding judge has ordered preparation of~~ clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

Advisory Committee Comment

Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of preparing and certifying the record in any appeal from a judgment of death ~~imposed after a trial that began on or after January 1, 1997~~; specifically, rule 8.613 provides for the record of the preliminary proceedings in such an appeal. ~~Rule 8.625 governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.~~

Subdivision (f). * * *

Subdivision (i). * * *

Rule 8.616. Preparing the trial record

(a) Clerk's duties

(1) The clerk must promptly—and no later than five days after the judgment of death is rendered:—

(A) Notify the reporter to prepare the reporter's transcript.; and

(B) Notify trial counsel to submit the lists of appearances, exhibits, and motions required by rule 4.230.

(2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death. The clerk is encouraged to send the clerk's transcript in electronic form if the court is able to do so.

(3) The clerk must certify the original and all copies of the clerk's transcript as correct.

(b) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and combined with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

(c) Sending the record to trial counsel

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts and one copy of each list of appearances, exhibits, and motions required by rule 4.230 that is not required to be sealed to each trial counsel~~,~~. The clerk must retain~~ing~~ the original transcripts and ~~the~~ any remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

(d) Extension of time

(1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30 days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.

(2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.

(3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

Advisory Committee Comment

Rule 8.616 implements Penal Code section 190.8(b).

Rule 8.619. Certifying the trial record for completeness

~~**(a) Review by counsel during trial**~~

~~During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.~~

~~(b)~~(a)Review by counsel after trial

(1) When the clerk delivers the clerk's and reporter's transcripts and the lists of appearances, exhibits, motions, and jury instructions required by rule 4.230 to trial counsel, each counsel must promptly:

~~(1)~~(A) Review the docket sheets, ~~and~~ minute orders, and the lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and

~~(2) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and~~

~~(3)~~(B) Review the court file to determine whether the clerk's transcript is complete.

(2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial counsel must confer regarding any errors or omissions in the reporter's transcript or clerk's transcript identified by trial counsel during the review required under (1).

~~(c)~~(b) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file:

(A) A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by ~~(b)~~(a), including conferring with opposing counsel; and ~~must serve and file~~

(B) Either:

~~(A)~~(i) A request to include additional materials in the record or to correct errors that have come to counsel's attention. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention; or

~~(B)~~(ii) A statement that counsel does not request any additions or corrections.

(C) The requirements of (B) may be satisfied by a joint statement or request filed by counsel for all parties.

(2) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (a)(2) and (b)(1) are extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages.

~~(2)~~(3) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

~~(3)~~(4) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

~~(d)~~(c) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly—and in any event within five days—notify the reporter of an order under (2). If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within ~~90~~ 30 days after the ~~judgment of death is rendered~~ last request to include additional materials or make corrections is filed, or, if no such request is filed, the last statement that counsel does not request any additions or corrections.

~~(e)~~(d) Transcript delivered in electronic form

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) Each copy delivered in electronic form must comply with the applicable requirements of rule 8.144 and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A copy of a sealed or confidential transcript delivered in electronic form must be ~~placed on a~~ separated ~~disk~~ from any other transcripts and ~~clearly~~ labeled as ~~confidential~~ required by rule 8.45.

(4) The reporter is to be compensated for copies delivered in electronic form as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the copies in electronic form to the clerk.

~~(f)~~(e) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the ~~30-day~~ period to review the record under ~~(c)~~(a) or the period to file a declaration under (b) must be served and filed within ~~that~~ the relevant period. ~~If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000~~.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

~~(g)~~(f) Sending the certified record

(1) When the record is certified as complete, the clerk must promptly send one copy of the clerk's transcript and one copy of the reporter's transcript:

(A) To each defendant's appellate counsel and each defendant's habeas corpus counsel~~: one paper copy of the entire record and one copy of the reporter's transcript in electronic form~~. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(B) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco~~: one paper copy of the clerk's transcript and one copy of the reporter's transcript in electronic form~~.

(2) The reporter's transcript must be in electronic form. The clerk is encouraged to send the clerk's transcript in electronic form if the court is able to do so.

~~(h)~~(g) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the clerk/executive officer of the Supreme Court.

Advisory Committee Comment

Rule 8.619 implements Penal Code section 190.8(c)–(e).

Subdivision ~~(e)~~(d)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.622. Certifying the trial record for accuracy

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel~~,~~:

(A) Any party may serve and file a request for corrections or additions to the record. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. Items that a party may request to be added to the clerk's transcript include a copy of any exhibit admitted in evidence, refused, or lodged that is a document in paper or electronic format. The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript. Parties may file a joint request for corrections or additions.

(B) Appellate counsel must review all sealed records that they are entitled to access under rule 8.45 and file an application to unseal any such records counsel determines no longer meet the criteria for sealing specified in rule 2.550(d). Notwithstanding rule 8.46(e), this application must be filed in the trial court and these records may be unsealed on order of the trial court.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them. A request for an exhibit to be included in the clerk's transcript must specify that exhibit by number or letter.

(3) Unless otherwise ordered by the court, within 10 days after a party serves and files a request for corrections or additions to the record, defendant's appellate counsel and the trial counsel from the prosecutor's office must confer regarding the request and any application to unseal records served on the prosecutor's office.

(4) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (1), (3), and (b)(4) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages.

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619~~(d)~~(c)(1)–(5) must be followed.

(2) If any application to unseal a record is filed, the judge must grant or deny the application before certifying the record as accurate.

~~(2)~~(3) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

~~(3)~~(4) The judge must certify the record as accurate within ~~120~~ 30 days after ~~it is delivered to appellate counsel~~ the last request to include additional materials or make corrections is filed.

(c) ~~Computer-readable~~ Copies of the record

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) In preparing the copies, the procedures and time limits of rule 8.619~~(e)~~(d)(2)–(5) must be followed.

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the ~~90-day~~ period to request corrections or additions under (a) must be served and filed within that period. ~~If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.~~

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge's certificate of accuracy~~,~~. ~~and a copy of~~ The reporter's transcript must be in electronic form. The clerk is encouraged to send the clerk's transcript in electronic form if the court is able to do so.

(2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a copy of the reporter's transcript in electronic form.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

~~**Rule 8.625. Certifying the record in pre-1997 trials**~~

~~**(a) Application**~~

~~This rule governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.~~

~~**(b) Sending the transcripts to counsel for review**~~

~~(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.~~

~~(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be delivered in electronic form~~

~~complying with the applicable requirements of rule 8.144 and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.~~

~~(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.~~

~~(c) Correcting, augmenting, and certifying the record~~

~~(1) Within 90 days after the clerk delivers the transcripts to each defendant's appellate counsel, any party may serve and file a request for correction or augmentation of the record. Any request for extension of time must be served and filed in the Supreme Court no later than five days before the 90-day period expires.~~

~~(2) If no party files a timely request for correction or augmentation, the clerk must certify on the original transcripts that no party objected to the accuracy or completeness of the record within the time allowed by law.~~

~~(3) Within 10 days after any party files a timely request for correction or augmentation, the clerk must deliver the request and the transcripts to the trial judge.~~

~~(4) Within 60 days after receiving a request and transcripts under (3), the judge must order the reporter, clerk, or party to make any necessary corrections or do any act necessary to complete the record, fixing the time for performance. If any portion of the oral proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.~~

~~(5) The clerk must promptly send a copy of any order under (4) to the parties and to the Supreme Court, but any request for extension of time to comply with the order must be addressed to the trial judge.~~

~~(6) The original transcripts must be corrected or augmented to reflect all corrections or augmentations ordered. The clerk must promptly send copies of all corrected or augmented pages to the parties.~~

~~(7) The judge must allow the parties a reasonable time to review the corrections or augmentations. If no party objects to the corrections or augmentations as~~

~~prepared, the judge must certify that the record is complete and accurate. If any party objects, the judge must resolve the objections before certifying the record.~~

~~(8) If the record is not certified within 90 days after the clerk sends the transcripts to appellate counsel under (b)(2), the judge must monitor preparation of the record to expedite certification and report the status of the record monthly to the Supreme Court.~~

~~(d) Sending the certified record~~

~~When the clerk certifies that no party objected to the record or the judge certifies that the record is complete and accurate, the clerk must promptly send:~~

~~(1) To the Supreme Court: the original record, including the original certification by the trial judge.~~

~~(2) To each defendant's appellate counsel, the Attorney General, and the California Appellate Project in San Francisco: a copy of the order certifying the record.~~

~~(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.~~

~~(e) Subsequent trial court orders; omissions~~

~~(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the persons and entities listed in (d).~~

~~(2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or court order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for further court order, the clerk must send the document or transcript—as an augmentation of the record—to the persons and entities listed in (d).~~

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **8/17/18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
CAPITAL CASE ATTORNEY PRETRIAL CHECKLIST	CASE NUMBER:

Instructions: This checklist is designed to be a tool for counsel throughout the pretrial proceedings in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the pretrial proceedings in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the pretrial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution in the pretrial proceedings must sign and submit this checklist. Counsel may, but is not required, to use the right hand column on the checklist to subsequently monitor their compliance with record preparation requirements.

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING PRETRIAL PROCEEDINGS	
1. Review, sign and submit checklist - Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.119(b).)	
2. Ensure all exhibits are marked - Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
3. Comply with rule 2.1040 - If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording which, under rule 8.610, must be included in the record on appeal.	
4. Prepare a list of appearances, exhibits, and motions - Prepare the lists specified in a, b, and c below.	
a. A list of all appearances by the party you represent during pretrial proceedings, including ex-parte appearances. • *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.	
b. A list of all exhibits offered by the party you represent during pretrial proceedings. • *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must include all exhibits offered at any pretrial proceedings and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.119(c)(1)(B).) • Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
c. A list of all motions made by the party you represent during the pretrial proceedings, including ex-parte motions. • *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution. (Cal. Rules of Court, rule 4.119(c)(1)(C).)	

Form Adopted for Mandatory Use
Judicial Council of California
CR-600 [New April 25, 2019]

Cal. Rules of Court,
rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
d. Providing lists to substituting counsel. • In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.119(c)(1)(A).)	
AFTER COMPLETION OF PRETRIAL PROCEEDINGS	
5. Prosecution's notification of intent to seek death penalty. • Primary counsel for the prosecution should notify the judge assigned to try the case or, if none is yet assigned, the presiding superior court judge or designee of the presiding judge, about whether the prosecution intends to seek the death penalty. • After the presiding judge has ordered preparation of the pretrial record, primary counsel for the prosecution should notify the judge assigned to try the case if the death penalty is no longer being sought.	
6. Submit and serve completed lists of appearances, exhibits, and motions. • No later than 21 days after the clerk notifies you to do so, submit the completed lists to the court. Serve a copy of all the completed lists, except the list of Penal Code section 987.9 appearances, on all parties. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.119(c).)	
a. The completed all list of appearances by the party you represented during pretrial proceedings.	
b. The completed list of all exhibits offered by the party you represented during pretrial proceedings.	
c. The completed list of all motions filed by the party you represented during the pretrial proceedings.	
7. **Review reporter's transcript, court file, and lists -** When the clerk delivers the reporter's transcript of the pretrial proceedings and the lists to you, you must: • Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any errors or omissions in the transcripts; • Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and • Review the court file to determine whether it is complete. (Cal. Rules of Court, rule 8.613(f)(2).)	
8. **Confer -** You must confer with opposing counsel within 21 days after the clerk delivers the reporter's transcripts and lists to you to discuss any errors or omissions in the reporter's transcript or court file identified during the review and determine whether any other proceedings or discussions should have been transcribed. (Cal. Rules of Court, rule 8.613(f)(3).)	
9. **Declaration and request for corrections or additions/statement -** Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file both of the following:	
a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel if ordered by the court. (Cal. Rules of Court, rule 8.613(g)(1)(A).)	

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

TASK	FOR OPTIONAL USE BY ATTORNEY
b. ONE of the following: • *A request for corrections or additions to the reporter's transcript or court file.* A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them, OR • *A statement that counsel does not request any corrections or additions.* Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.613(g)(1)(B) and (C).)	

I acknowledge that I have reviewed this checklist.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **08/09/18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
CAPITAL CASE ATTORNEY LIST OF ☐ Pretrial ☐ Trial **APPEARANCES** ☐ Regular ☐ Penal Code, § 987.9	CASE NUMBER:

Instructions: Primary counsel for a defendant or for the prosecution in a case in which the death penalty may be imposed must list each appearance made on behalf of his or her client, including ex-parte appearances. For each appearance, provide the date of the appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. Lists of Penal Code section 987.9 appearances must be separate from lists of all other appearances.

Date	Court Dept./Div.	Name of Attorney Making Appearance	Nature of Appearance

(continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
CR-601 [New April 25, 2019]

CAPITAL CASE ATTORNEY LIST OF APPEARANCES (Criminal)

Cal. Rules of Court,
rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

Date	Court Dept./Div.	Name of Attorney Making Appearance	Nature of Appearance

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-601, List of Appearances" for a title.*

Date:

_____ , attorney for _____

(TYPE OR PRINT NAME)

▶ _____

(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF	FOR COURT USE ONLY
STREET ADDRESS:	
MAILING ADDRESS:	**DRAFT**
CITY AND ZIP CODE:	**08/09/18**
BRANCH NAME:	**Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
CAPITAL CASE ATTORNEY LIST OF EXHIBITS ☐ Pretrial ☐ Trial	CASE NUMBER:

Instructions: For each exhibit you offer on behalf of your client in a case in which the death penalty may be imposed, provide the exhibit number and a brief description of the exhibit and indicate whether the exhibit was admitted in evidence, lodged, refused, or withdrawn.

Exhibit #	Description	Outcome
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn

(continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

Exhibit #	Description	Outcome
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-602, List of Exhibits" for a title.*

Date:

______________________________, attorney for ______________________________
(TYPE OR PRINT NAME)

▶ ______________________________
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **8/09/18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
CAPITAL CASE ATTORNEY LIST OF MOTIONS ☐ Pretrial ☐ Trial	CASE NUMBER:

Instructions: For each motion you make on behalf of your client in a case in which the death penalty may be imposed, including any ex-parte motions, provide the date the motion was made, the department in which it was made, and a brief description of the motion. For pretrial motions, check the box if the motion is awaiting resolution.

Date	Court Dept./Div.	Description	Awaiting Resolution
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐

(continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
CR-603 [New April 25, 2019]

CAPITAL CASE ATTORNEY LIST OF MOTIONS (Criminal)

Cal. Rules of Court, rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

Date	Court Dept./Div.	Description	Awaiting Resolution
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-603, List of Motions" for a title.*

Date:

_____, attorney for _____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF	FOR COURT USE ONLY
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **8/09/18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
CAPITAL CASE ATTORNEY LIST OF JURY INSTRUCTIONS	CASE NUMBER:

Instructions: For each jury instruction you submit in writing in a case in which the death penalty may be imposed, provide the instruction number and a brief description of the instruction and indicate whether the instruction was given, given as modified, refused, or withdrawn.

Instruction #	Description	Outcome
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn

(continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

Instruction #	Description	Outcome
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-604, List of Jury Instructions" for a title.*

Date:

______________________________ , attorney for ______________________________
(TYPE OR PRINT NAME)

▶ ______________________________
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **08/17/18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
CAPITAL CASE ATTORNEY TRIAL CHECKLIST	CASE NUMBER:

Note: Under Penal Code section 1240.1(e)(1), in capital cases, the obligations of defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor include taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

Instructions: This checklist is designed to be a tool for counsel throughout the trial in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the trial in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the trial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed must sign and submit this checklist. Counsel may, but is not required, to use the right hand column on the checklist to monitor their compliance with record preparation requirements.

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING TRIAL	
1. **Review, sign and submit checklist** - Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.230 (b).)	
2. **Review daily transcripts and identify errors or omissions** - During trial, you are required to call the court's attention to any errors or omissions you find in the daily reporter's transcripts. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention.	
3. **Ensure all exhibits are marked** - Make sure that all exhibits that you offer during the trial are properly marked for identification.	
4. **Comply with rule 2.1040** - If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording which, under rule 8.610, must be included in the record on appeal.	
5. **Provide copies of audio or visual aids to the court** - If you use any audio or visual aids in presentations to the jury that are not subject to rule 2.1040, including digital or electronic presentations, provide a copy of the audio or visual aid to the court. If a visual aid is oversized, provide a photograph of that visual aid in place of the original. For digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides or images. Photographs and printouts must be on 8 1/2 x 11 paper.	
6. **Prepare lists of appearances, exhibits, motions, and jury instructions** - Prepare the lists specified in a, b, c, and d below.	

Form Adopted for Mandatory Use
Judicial Council of California
CR-605 [New April 25, 2019]

Cal. Rules of Court,
rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
a. A list of all appearances by the party you represent during the trial, including ex-parte appearances. • *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.	
b. A list of all exhibits offered by the party you represent during the trial. • *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must include all exhibits offered during the trial and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(B).) • Make sure that all exhibits that you offer during the trial are properly marked for identification.	
c. A list of all motions made by the party you represent during the trial, including ex-parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. (Cal. Rules of Court, rule 4.230(d)(1)(C).)	
d. A list of all jury instructions submitted in writing by the party you represent during the trial. *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used for this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(D).)	
e. Providing lists to substituting counsel. In the event of any substitution of attorney during the trial, the relieved attorney must provide the lists of all appearances, exhibits, motions, and jury instructions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.230(d)(1)(A).)	
AFTER COMPLETION OF TRIAL IF DEATH PENALTY IS IMPOSED Note that under Penal Code section 1240.1(e)(1), in order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor must continue to represent the respective parties until the record is certified.	
7. Submit and serve completed lists of appearances, exhibits, and motions. • No later than 21 days after the imposition of a sentence of death, you must submit the lists to the court and serve a copy of all the lists, except the list of Penal Code § 987.9 appearances, on all parties. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcripts over 10,000 pages. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.230(d)(2))	
a. The completed list of all appearances by the party you represent during the trial.	
b. The completed list of all exhibits offered by the party you represent during the trial.	
c. The completed list of all motions made by the party you represent during the trial.	
d. The completed list of all jury instructions submitted in writing by the party you represent during the trial.	

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
8. Review reporter's transcript, clerk's transcript, and lists - When the clerk delivers the clerk's and reporter's transcript and the lists to you, you must: • Review the docket sheets, minute orders, and the lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and • Review the court file to determine whether the clerk's transcript is complete. (Cal. Rules of Court, rule 8.619(a)(1).)	
9. Confer - Within 21 days after the clerk delivers the transcripts and lists, you must confer with opposing counsel to discuss any errors or omissions in the reporter's transcript or clerk's transcript identified during your review. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages. (Cal. Rules of Court, rule 8.619(a)(2).)	
10. Serve and file declaration and request for corrections or additions/statement - Within 30 days after the clerk delivers the transcripts and lists to you, each trial counsel must serve and file both of the following (if the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages):	
a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel. (Cal. Rules of Court, rule 8.619(b)(1)(A).)	
b. ONE of the following: • A request to include additional materials in the record or to correct errors that have come to counsel's attention. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them. OR • A statement that counsel does not request any corrections or additions. Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.619(b)(1)(B) and (C).)	
11. Participate in hearing to certify the record for completeness - If any party files a request for corrections or additions to the record, the trial court will set a hearing to consider the request. (Cal. Rules of Court, rule 8.619(c).)	
12. Participate, as necessary, in certification of the record for accuracy. • When appellate counsel for the defendant is retained or appointed, the trial court will send that counsel a copy of the record that has been certified for completeness. Within 90 days after that, appellate counsel or any other party may serve and file a request for corrections or additions to the record. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 15 days for each 1,000 pages of combined transcripts over 10,000 pages. • If a request for corrections or additions to the record is filed, unless otherwise ordered by the trial court, within 10 days after that request is filed, defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person or by telephone, to discuss the request and any application to unseal records served on the prosecutor's office.	

I acknowledge that I have reviewed this checklist.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY)

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
1.	Michael Breton San Francisco, California	A	See comments on specific provisions below	See responses to specific comments below.
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section Saul Bercovitch, Director of Governmental Affairs Kelly Woodruff San Francisco, California	NI	The Committee on Appellate Courts supports the proposed new rules and amendments to the Rules of Court relating to preparation of the record on appeal in death penalty cases. The Committee notes that the new rules and amendments apply almost exclusively to the trial courts and trial counsel, and therefore the Committee has no specific comments with respect to most proposed changes. See comments on specific provisions below.	The working group notes the commenter's support for these rules. See responses to specific comments below.
3.	Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	NI	The Criminal Justice Legal Foundation, an organization dedicated to the protection of the rights of victims of crime, submits this comment on the proposed rule on record preparation in capital cases. The proposed rules are generally a step in the right direction, but we believe they can use some tightening up. See comments on specific provisions below.	See responses to specific comments below.
4.	Michele Hanisee Deputy District Attorney Los Angeles County District Atty	A	See comments on specific provisions below.	See responses to specific comments below.

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

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
5.	Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	NI	***Does the proposal appropriately address the stated purpose?*** Not entirely. The Stated purpose seems to be to Increase Efficiency. The methods for achieving increased efficiency seems to be: See comments on specific provisions below.	See responses to specific comments below.
6.	Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	AM	The following are comments submitted on behalf of the Los Angeles County Public Defender's Office regarding Judicial Council proposed Rule SPR18-11. See comments on specific provisions below.	See responses to specific comments below.
7.	Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	NI	The Office of the State Public Defender ("OSP D") represents over 120 men and women on California's death row. By statute, OSPD's "primary responsibility" is representing death-sentenced inmates in direct appeal proceedings (Gov. Code, § 15420) and therefore has a particular interest, and expertise, in the preparation of the record in capital cases. We submit the following comments on the proposed rules regarding Record Preparation in Death Penalty Cases, Item SP18-11. * * * OSPD appreciates the Judicial Council's consideration of the above comments. Please do	See responses to specific comments below.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			not hesitate to contact me to discuss these comments further. See comments on specific provisions below.	
8.	Michael Ogul Deputy Public Defender Santa Clara County Public Defender	AM	I am pleased to submit the following comments in regards to the proposed changes to the Rules of Court concerning the duties of trial counsel in regard to Record Preparation in Death Penalty Cases, Item Number SP18-11. **Statement of Interest** I am the attorney supervising the homicide unit ("Special Trial Unit") of the Santa Clara County Public Defender's Office. I also continue to litigate murder cases, including as lead counsel in a pending death penalty case. I have been a public defender for over 37 years, and I have been counsel of record in death penalty cases throughout that time, with occasional short breaks in between capital cases. I have been lead counsel at the penalty or punishment phase of three death penalty jury trials, each of which resulted in verdicts, two of life imprisonment without the possibility of parole, and one of death. I was also counsel in over 20 other death penalty cases that eventually resolved for lesser sentences or resulted in the prosecution dropping the death penalty. I am the author of the chapter on Death Penalty Cases in California Criminal Law, Procedure and Practice,	See responses to specific comments below.

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			Continuing Education of the Bar, 2016-2018 annual editions; was the defense attorney consultant to the Death Penalty Benchguide, California Center for Judicial Education and Research, © Judicial Council of California, from its inception through 2011; and have been the editor of, and author of selected chapters in, the California Death Penalty Defense Manual, California Attorneys for Criminal Justice and the California Public Defenders Association, from 2004 through the present. I have been active in training defense counsel in capital cases since 1990, and have authored well over 100 articles on various topics of capital defense. **Position** I agree with some of the proposals if they are modified. I do not agree with others. My position is spelled out in detail below. See comments on specific provisions below.	
9.	Superior Court of Los Angeles County	AM	The Los Angeles Superior Court generally supports the approach incorporated in these procedures. They are important means through which the trial courts can manage the record preparation process in death penalty cases. ***Does the proposal appropriately address the stated purpose?***	The working group notes the commenter's general support for these rules.

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

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			Yes. See comments on specific provisions below.	See responses to specific comments below.
10.	Superior Court of Orange County	NI	The Judicial Council seeks input to fulfill its rule-making obligations under Proposition 66 by making the record preparation process in death penalty cases more efficient. The two main premises of the proposal as stated on page 4 of the Invitation are good but the proposed solutions, rather than reducing the level of complexity for the timely preparation of the trial record instead increases it by introducing new mandatory forms and rules into the process. Many times, increased complexity equates to decreased efficiency in completing a process. ***Does the proposal appropriately address the stated purpose?*** Likely no. See comments on specific provisions below.	See responses to specific comments below.
11.	Superior Court of Placer County Jake Chatters, Court Executive Officer	A	On behalf of the Superior Court of Placer County, thank you for the opportunity to comment on the proposed California Rules of Court rules and forms outlined in SP 18-11, Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases. The court appreciates the Proposition 66 Working Group's	The working group notes the commenter's general support for these rules.

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

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			proactive approach to record preparation, maintenance, and certification. The court supports the proposed rules but does offer the following in response to the request for specific comments: See comments on specific provisions below.	 See responses to specific comments below.
12.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	***Does the proposal appropriately address the stated purpose?*** Yes See comments on specific provisions below.	The working group notes the commenter's general support for these rules. See responses to specific comments below.
13.	Kristin Traicoff Attorney Sacramento, California	AM	As a capital appellate and habeas corpus practitioner in California, I agree with many of the proposed rules. See comments on specific provisions below.	 See responses to specific comments below.

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** If the forms are filed with the court, then the form is primarily for the court to use in tracking proceedings. I have not seen any cases on appeal from L.A. with these forms in the ROA. How long have they been used? Have they been assessed for impact on length of time to file the ROA with the CSC? I don't see that signatures add anything to the forms, and if signatures are required, I do not see why there is not one form for all the parties to sign instead a multiple forms. This does not seem efficient. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR605), or should any items on the proposed forms be removed?*** The need to preserve records should be addressed on the Trial Checklist. There should be a form for that as well. It makes no sense to wait until appellate counsel is appointed to file a motion to preserve the evidence and records. Trial counsel should do this as part of the record	The working group's intent is for forms CR-600 and CR-605 to be used primarily as tools by the attorneys in pretrial and trial proceedings in capital cases to help them recognize and carry out their responsibilities related to preparation of the record, rather than as a tool for tracking by the courts. The signature and submission requirements are intended as the attorney's acknowledgement to the court at the outset of their involvement in the case that they have reviewed the responsibilities outlined on the form. The working group has made several changes to the proposed rules and forms to better clarify this intent, including revising the instructions on the forms, removing the heading indicating the right hand column is for court use, and adding a sentence above the signature line indicating that the attorney is acknowledging he or she has reviewed the form. The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	correction proceedings in the trial court. It would be nice if there was a rule of court which automatically called for the preservation of records.	controversy. Adding the obligations and form suggested would not be a minor substantive change and thus would need to be circulated for public comment. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Checklists:** The checklists described in this proposed rule should serve as a guide to trial counsel and should be informational only. Capital trial counsel has many responsibilities and in our view imposing additional obligations on trial counsel is counter-productive and may increase the length of time necessary to prepare for trial and increase the length of the trial itself. The signature of trial counsel seems unnecessary. At most, there should be an acknowledgement on the record that counsel has been provided a checklist, has read it and understands it.	Please see response to the comments of Virginia C. Lindsay, above. Consistent with this comment, the working group's intent is for forms CR-600 and CR-605 to be primarily informational. The signature and submission requirements are intended as the attorney's acknowledgement to the court at the outset of their involvement in the case that they have reviewed the responsibilities outlined on the form. The working group has made several changes to the proposed rules and forms to better clarify this intent, including revising the rules to indicate that the counsel is acknowledging having reviewed the form by signing it, revising the instructions on the form, removing the heading indicating the right hand column is for court use, and adding a sentence above the signature line indicating that the attorney is acknowledging having reviewed the form.

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Broadly speaking, while many of the proposed checklists and ideas are good, there is a difference between providing checklists that might help counsel better perform their existing duties and imposing additional obligations regarding those checklists. . . . Further, CR-600 (pretrial checklist) and CR-605 (trial checklist) should be informational only. Form CR-600: I object to making execution of this list mandatory. While this checklist provides useful guidance to trial counsel, requiring counsel to sign these checklists serves no purpose. It doesn't insure that counsel will actually perform these tasks. Instead, the list should be provided only for informational purposes. Therefore, I urge the following change in the "Instructions" portion of this form: Please delete the second sentence: "Primary counsel for each defendant and the prosecution in the pretrial proceedings in a case in which the death penalty may be imposed must review, sign, and file this checklist." Alternatively, modify the foregoing sentence to read: "Primary counsel for each defendant and the prosecution in the pretrial proceedings in a case in which the death penalty may be imposed should review and keep a copy of this checklist."	Please see the response to the comments of the Los Angeles County Public Defender above. The working group declined to delete this sentence. The working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists. However, the working group did revise the sentence to clarify that counsel's signature is to acknowledge having reviewed the checklist. The working group agrees that counsel should be encouraged to retain a copy of these checklists and has revised the proposed rules and forms to so indicate.

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

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	Form CR-600, box 3.c.: Modify to "The list must indicate all motions that have been ruled upon and those that are awaiting resolution" Form CR-600, box 5 (page 2): Delete "Serve a copy of all the completed lists, except the list of PC 987.9 appearances, on all parties" Form CR-605: I object to making execution of this list mandatory. While this checklist provides useful guidance to trial counsel, requiring counsel to sign these checklists serves no purpose. It doesn't insure that counsel will actually perform these tasks. Instead, the list should be provided only for informational purposes. Therefore, I urge the following change in the "Instructions" portion of this form: Please delete the second sentence: "Primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed must review, sign, and file this checklist."	The working group has modified the language of rule 4.119 and CR-600 to clarify that the list must indicate if any of the motions listed are still pending. The working group declined to make this suggested change. These checklists would be submitted to the court. If they are not served on the other party, this would be ex parte communication with the court. The working group also does not see a reason why these checklists, which, once submitted to the court, will be public court records, should not be served on opposing counsel. Please see the response to the comments of the Los Angeles County Public Defender above. The working group declined to delete this sentence. As noted above, the working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists. However, the working group did revise the

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	Alternatively, modify the foregoing sentence to read: "Primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed should review and keep a copy of this checklist."	sentence to clarify that counsel's signature is to acknowledge having reviewed the checklist. The working group agrees that counsel should be encouraged to retain a copy of these checklists and has revised the proposed rules and forms to so indicate.
Superior Court of Los Angeles County	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR-605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** Yes. All counsel should submit the forms. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), or should any items on the proposed forms be removed?*** No.	Based on the comments received, the working group has kept the requirement that the forms be signed and submitted only by primary counsel for the defendant and the prosecution.
Superior Court of Orange County	If the proposed method of preparation, including the requirement for the types of forms put forth in the Invitation, has resulted in improved efficiencies in the appellate process, it would be helpful to know this. But without some sort of analysis of how the model put forth has benefitted the current process and based on the anticipated increase in workload requirements that	The Supreme Court staff who review the records in capital cases report that the records received from the Superior Court of Los Angeles County require the fewest corrections of any of the records that they receive in capital cases. The view of the working group is that this can be attributed, at least in part, to the checklists and lists of appearances, exhibits, motions, and jury

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	implementation of this model would require, there seems to be no justification for adopting this pattern, especially those aspects that would be mandatory. It must be considered that bringing a capital case to trial which results in the imposition of the death penalty is a complex and lengthy process – one which takes years. Cases can take unforeseen circuitous turns before, during or after the guilt or penalty phases. Due to the nature of these cases themselves, it appears there will always be the opportunity for lost efficiencies, no matter the best efforts of those involved. It is therefore difficult to imagine that simply adding another layer to an already existing process would be anything but duplicative. If, however the Council's view is that the process will be expedited by reducing or eliminating need for further examination of the record before submission to the Supreme Court, the proposals may be construed as justifiable. Alternatively, if the process remains unchanged it would be acceptable if the checklists are advisory only to assist the court. ***Does the proposal appropriately address the stated purpose?*** Likely no. Additional forms, checklists, and review procedures for trial counsel would more likely than not invite further delays. While the premise that counsel participating in the pretrial and trial proceedings are in the best position to ensure completeness and accuracy of the record sounds true, getting trial counsel to comply	instructions that the Superior Court of Los Angeles County requires and that these are therefore good models to incorporate in statewide rules. Please see the response to the comments of the Los Angeles County Public Defender above. It is the working group's intent that these checklists be primarily informational tools for the attorneys in pretrial and trial proceedings in capital cases to help them recognize and carry out their responsibilities related to preparation of the record and has modified the rules and forms to clarify this. The working group acknowledges that there will be some additional burden on pre-trial and trial counsel in reviewing and submitting the checklists and completing and filing the lists of appearances, exhibits, motions, and jury instructions. The working group's view is that this devotion of additional time at this point in the capital

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	with capital case appellate procedures will add delay as trial counsel is likely unfamiliar and more resistant to comply with the California Rules of Court, based on our experiences. Further there is nothing provided in the Invitation to indicate that this is a 'best practice' solution that can be quantified and should therefore be adopted. ***Should counsel be required to sign and submit proposed 'Capital Case Attorney Pretrial Checklist' and 'Capital Case Attorney Trial Checklist'?*** No. These forms and checklists would be redundant with complete and accurate minutes. Counsel is already required to review the minutes of a case to ensure their filings are contained in the record. These check lists would be an added layer of processing that would likely require multiple follow ups and reminders with trial counsel. If these forms are provided at all, they should be informational or advisory only. ***Should any additional obligation be identified in proposed 'Capital Case Attorney Pretrial Checklist' and 'Capital Case Attorney Trial Checklist' or should any items on the proposed forms be removed?*** No. Again, these checklists would be redundant with complete and accurate minutes.	case process will ultimately reduce the overall time and resources spent in producing a complete and accurate record in capital cases. Please see first paragraph of the response above. Please see response above. The checklists are intended to be an informational tool for counsel, not a substitute for court minutes. The working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists.

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Forms CR-600 and CR-605: Counsel should be required to sign and submit these proposed forms. This will fulfill the intended purpose of ongoing record maintenance to expedite the appeals process and can assist court staff in actively monitoring the status of the case. To reduce the burden of paperwork for counsel and court staff, we would suggest that only primary counsel should be required to sign and submit these checklists.	Based on this and other comments received, the working group has kept the requirement that the forms be signed and submitted only by primary counsel for the defendant and the prosecution. The working group has modified the rules and forms to further clarify that the checklists are intended primarily as an informational tool to help counsel fulfill their record preparation responsibilities.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** Yes, only primary counsel should be required to sign and submit these checklists as it would be a helpful tool for the court. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), or should any items on the proposed forms be removed?*** No, the checklists seem complete.	Please see the response to the comment of the Superior Court of Placer County above. The working group appreciates this input.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**List of appearances** This list seems a bit superfluous since both the minute orders and reporter's transcript will reflect the appearances. However – if this rule is to be implemented as mandatory, it needs to be clarified whether the list of appearances should include ex-parte appearances in the trial court or in other courts, to obtain ex-parte orders. And if so, at what point the list is filed, thus revealing the existence of ex-parte orders. The time of filing of the list should probably be after verdict and sentence. That said – the lists should be provided to counsel at least from the time the prosecution announces they are seeking death so the parties will be noticed that they need to keep track of their appearances which is more easily done contemporaneous to the appearance. **List of motions filed** This is a good idea to have as a mandatory list, as there are so many motions filed and it is hard to reconstruct when certifying the record for appeal. Need to clarify if this includes ex-parte motions and also non -substantive motions (e.g. medical orders, showers for the defendant) Again – time of filing of the list should be after verdict	The working group's view is that the attorney's list of appearances will serve as a cross-check, not a replacement for, the court minutes and reporter's transcript, and will help ensure that a complete record is prepared as early as possible. The working group agrees that the rule and forms should make clear that the list must include ex parte appearances and has modified them accordingly. Under proposed rule 8.613(d), the clerk will notify counsel to submit the lists for the preliminary proceedings at the same time as preparation of the record of the preliminary proceedings must begin - after the prosecution notifies the court that is seeking the death penalty. Under proposed rule 4.230(d)(2), counsel must submit the trial lists to the court no later than 21 days after the imposition of a sentence of death. Proposed forms CR-600 and CR-605 indicate that the lists should be prepared during the pretrial and trial proceedings. To further encourage simultaneous updating of lists, the working group has added comments to rules 4.119 and 4.230 addressing this topic. The working group agrees that the rule and forms should make clear that the list must include ex parte motions and has modified them accordingly.

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

Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	and sentence, to avoid disclosure of work product or ex-parte orders that remain under seal.	
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. . . . The . . . use of forms for motions and jury instructions will all make the process of record correction more efficient. **Relieving courtroom clerks of the responsibility for tracking appearances in criminal proceedings** This is a very bad idea. The forms for motions and jury instructions are good ideas because motions and jury instructions are often left out of the court file inadvertently and they are uniquely known to the defense. However, keeping track of court appearances is different altogether. Requiring both defense and prosecution to keep track of proceedings for the court is basically telling courtroom clerks they are not responsible for that information. This sends the wrong message and will not result in increased efficiency. I actually think the Working Group has it backwards. They say they considered extra training and best practices, but concluded that these would supplement rule changes and forms, but would not substitute for them. Instead, I think the forms should supplement training, but they are no substitute for increasing professionalism among court staff through proper staffing, best practices and training, as well as better	The working group appreciates this input. The working group's view is that the attorney's list of appearances will serve as a cross-check, not a replacement for, the court tracking of appearances, and will help ensure that a complete record is prepared as early as possible. For this reason, the working group did not modify the proposal to eliminate this requirement.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	court technology. The requirement to keep track of every appearance of a party in the case should be removed from the checklist. Court clerks should keep track of every appearance. At the end of pretrial and trial proceedings, the clerk could print out a list of appearances to be verified by counsel, but to require all parties to produce their own lists is inefficient and unhelpful. The idea that this will reduce costs is a joke. ***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** I see no problem with this except for lists of appearances, which should be maintained by the court clerk. ***Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR604) be mandatory or should these be optional forms?*** I see no problem with either approach except for lists of appearances, which should be maintained by the court clerk. ***Are the proposed time frames for submission of these lists to the court appropriate?*** I don't think the time frames make sense at all. How can you know what motions you will file or what	The working group appreciates this input. Based on other comments, the working group is recommending that these be mandatory forms. The intent is for these lists to be completed as the appearances and motions are actually made, exhibits

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	appearances you make or funds request within 21 days? The forms should be used by counsel at the appropriate times. The list of motions would be filed before the start of trial. The lists of exhibits would be filed at the start of the case-in-chief and the start of the defense case, and the list of jury instructions would be filed after the close of evidence. The checklists are just case management tools. I don't see why they need to be filed by counsel at all. Counsel could sign them in court as part of the proceedings.	offered, and jury instructions submitted. The working group has modified the proposal to add advisory committee comments to rules 4.119 and 4.230 to clarify this intent. Under proposed rules 8.613(d) and 4.230(d)(2), the completed list are not submitted to the court until after the conclusion of the pretrial or trial proceedings.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Proposed Rules 4.119 and 4.230: Lists of appearances, exhibits, motions, and jury instructions would require counsel**—during both the pretrial and trial stages in a case in which the death penalty might be imposed—to prepare lists of all the court appearances and motions that they make and all the exhibits they offer and, at the trial stage, jury instructions that they offer. Trial counsel has numerous responsibilities to ensure her client is effectively represented at trial. One of the busiest times for trial counsel is the months just prior to the commencement of trial. This is also the period of time when numerous motions are filed and heard by the trial court. Imposing these responsibilities on trial counsel during this period of time will significantly add to trial counsel's already heavy burden. It will inevitably lead to delays because trial counsel will not have the necessary time to prepare these lists. Thus, such lists which are certainly important to post-conviction counsel should be prepared in the first instance by the court clerk	The working group acknowledges that there would be some additional burden on pre-trial and trial counsel in preparing the lists of appearances, exhibits, motions, and jury instructions. However, it is counsel who is making the appearances and motions, offering the exhibits, and submitting the jury instructions. Therefore, the working group's view is that counsel are in an ideal position to track these activities and that it will not be a substantial burden on them to note these activities on the required lists as the activities are undertaken. The court clerk also makes a record of these activities and the intent is for the attorney's lists to serve as a cross-check for the court

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Commenter	**Comment**	**Working Group Response**
	and then reviewed by trial counsel for accuracy within a specified period of time following the imposition of a death sentence. The court clerk is the person responsible for inputting information to the court docket and thus, is the person who has the information and is in a position to compile it. Trial counsel should have an opportunity to be heard regarding the accuracy of these lists and should be able to supplement them as necessary but it should not be trial counsel's responsibility to compile these lists in the first instance.	tracking of these activities. The working group's view is that if pretrial and trial counsel devote some additional time to track these activities during the proceedings, it will ultimately reduce the overall time and resources spent by both counsel and the courts in producing a complete and accurate record in capital cases.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Broadly speaking, while many of the proposed checklists and ideas are good, there is a difference between providing checklists that might help counsel better perform their existing duties and imposing additional obligations regarding those checklists. I agree that some checklists should be mandatory, e.g., CR-602 (list of exhibits), CR-603 (list of motions), and CR-604 (list of jury instructions). I object to CR-601 (list of appearances) as unnecessary, duplicative, and creating an undue burden on trial counsel. For those lists that counsel must file, they should not be required to serve a copy on opposing counsel. Ultimately, all counsel will have an opportunity to review the clerk's transcript on appeal and are responsible to bring any omissions to the court's attention. These lists are limited to documents filed or offered by that counsel, not opposing counsel, and requiring counsel to serve opposing counsel with these lists imposes an unnecessary burden.	Based on this and other comments, the working group is recommending that these be mandatory forms. Please see response to more detailed explanation of this objection below. The working group declined to make this suggested change. These lists would be submitted to the court. If they are not served on the other party, this would be ex parte communication with the court. The working group also does not see a reason why these lists, which, once submitted to the court, will be public court records, should not be served on opposing counsel.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	Rule 4.119(c)(3): Change 21 days after the clerk notifies counsel to "21 days after the clerk notifies counsel or 21 days after counsel receives both the clerk's transcript and reporter's transcripts, whichever occurs later"	The working group declines to make this suggested change. Penal Code section 190.9 requires that, unless an extension of time is granted, the court is required to certify the record of the preliminary proceedings no later than 120 days following the prosecution's notification that the death penalty will be sought. Existing rule 8.613 establishes the procedures designed to meet this short timeframe, including by requiring counsel who represented the parties in the preliminary proceedings to complete their review of the reporter's transcript and of the docket sheets and minute orders within 30 days after delivery of the reporter's transcript to them (note that this rule does not require preparation of a clerk's transcript of the preliminary proceedings at this time). The proposed attorney lists of pretrial appearances, motions, and exhibits are intended to facilitate that review. This would not be possible if the lists were delivered 21 days after the reporter's transcript is delivered to counsel.
	Delete the requirement of serving a copy of the lists on opposing counsel	Please see the response to the comments above about service of the pretrial lists.
	Rule 4.230(d)(1)(C): Insert "written" so that it reads "A list of all written motions made by that party."	The working group declines to make this change. It will be a helpful cross-check for the clerk's and reporter's transcripts for the attorney list of motions to include both written and oral motions.
	Rule 4.230(d)(2): Change "21 days after the imposition …." to "Not later than 21 days after the imposition of a sentence of death	The working group declines to make this suggested change. The proposed attorney lists of trial appearances, motions, exhibits and jury instructions are intended to

Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	or receipt of the corrected copies of the Clerk's and Reporter's Transcripts, whichever occurs later, …"	facilitate the court's preparation of the initial version of the clerk's transcript and counsel's review and the correction of both this and reporter's transcripts. The use of the lists for these purposes would not be possible if the lists were delivered 21 days after receipt of the corrected transcripts.
	Form CR-601: I object to this form. Requiring a list of appearances is different than lists of exhibits, written motions, or jury instructions, for several reasons. First, it does not help promote counsel's effectiveness. Second, because it is not critical to compile or maintain such a list as the case is progressing, it will impose an onerous requirement to compile this list at the conclusion of the proceedings. Third, the court clerk can compile it as easy as counsel can, and the appearances will undoubtedly be listed in the court's database. Fourth, requiring counsel to submit this list may create a situation where counsel inadvertently leaves an appearance off the list, leading the clerk to overlook including the minutes, orders, and transcripts from that appearance in the appellate record. If this form remains, please change the box labeled "Regular" to "Post-trial" in the section "Capital Case Attorney List of Appearances".	The working group acknowledges that there would be some additional burden on pre-trial and trial counsel in preparing the lists of appearances. However, the working group's view is that, because it is counsel who is making these appearances, counsel are in an ideal position to track them and that it will not be a substantial burden on them to note these appearances on the required lists as they are made. The court clerk also makes a record of these appearances and the intent is for the attorney's lists to serve as a cross-check for the court tracking. If there are inconsistencies between the information recorded by the clerk and the attorney's record of appearances, the process of reviewing both will allow this to be addressed by those involved in the proceedings soon after the proceedings took place.
	Form CR-603: Change title to "Capital Case Attorney List of Written Motions"	Please see response to suggestion regarding limitation to written motions above.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** Yes. Most of the listings are already provided to the courtroom and served on opposing counsel without the requirement. ***Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR- 604) be mandatory or should these be optional forms?*** Yes, they should be mandatory forms. ***Are the proposed time frames for submission of these lists to the court appropriate?*** Yes.	The working group notes the commenter's support for this requirement. Based on this and other comments, the working group is recommending that these be mandatory forms. The working group notes the commenter's support for these timeframes.
Superior Court of Orange County	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** No. All this information would be redundant with complete and accurate minutes. Furthermore, in our experience, trial counsel is not as concerned with completeness and accuracy to the extent that appellate counsel is. If trial counsel submits inaccurate lists, this would create confusion for appellate counsel and require further resolution during the accuracy phase to clear up.	The working group's view is that the attorney's list of appearances, motions, exhibits, and jury instructions will serve as a cross-check for the court minutes and reporter's transcript of the proceedings, and will help ensure that a complete record is prepared as early as possible. The working group appreciates that some courts do an outstanding job of tracking all of these items in the minutes, but in the experience of working group members, courts often face difficulties in preparing complete and accurate records of capital cases. Problems with the completeness and accuracy of records become

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	List of Jury Instructions (form CR-604) be mandatory or should these be optional forms? Should not be mandatory for the reasons explained above. ***Are the proposed time frames for submission of these lists to the court appropriate?*** No.	more difficult to correct the more time passes after the completion of the proceedings. It is therefore the working group's view that counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and correct errors in the record. The working group understands that, in some places, this may require a shift in culture. It is the working group's expectation that these proposed rules, combined with educational efforts by justice system partners, can help with that cultural shift. Based on the weight of the comments received, the working group is recommending that these be mandatory forms.
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Forms CR-601, CR-602, CR-603 and CR-604: The proposed forms should be mandatory to ensure consistency and accuracy of the record. This will in turn expedite the record preparation process for appeals.	Based on this and other comments, the working group is recommending that these be mandatory forms.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** Yes, again this is helpful information for the court.	The working group notes the commenter's support for these requirements.

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

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR-604) be mandatory or should these be optional forms? These forms should be made Mandatory so all courts are using the same forms.	Based on this and other comments, the working group is recommending that these be mandatory forms.
	Are the proposed time frames for submission of these lists to the court appropriate? Yes	The working group notes the commenter's support for these timeframes.

Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** NO. This is a waste of time and it will have a negative effect on the professionalism of the court clerks.	The working group considered all of the comments it received on this question and decided to keep the requirement that the clerk provide this notice in the proposal. Under the existing procedures in rule 4.116 for preparation of the record of the preliminary proceedings, it is the clerk that triggers the preparation of the record after being notified that the prosecution is seeking the death penalty. The working group's view is that this is also the appropriate time for counsel to submit the pretrial lists of appearances, exhibits and motions and that it makes sense for the clerk to notify counsel of this

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
		obligation when the clerk notifies the court reporters. For simplicity and consistency between this phase of the record preparation process and the preparation of the record of the trial, the working group also concluded that it was appropriate for the clerk to notify counsel of their obligation to submit the trial lists of lists of appearances, exhibits, motions, and jury instructions.
Superior Court of Los Angeles County	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** Yes.	Please see the response to the comments of Virginia C. Lindsay above.
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Rule 4.119(c)(3), amended Rule 8.613(d)(2), and amended Rule 8.616(1)(B): Notifying counsel to submit lists of appearances, exhibits, and motions should not be mandatory for the clerk. The court suggests that counsel submit these lists after having met and conferred pursuant to Rules 8.613(f)(3) and 8.619(a)(2), thus allowing the opportunity for cross-referencing against the transcript(s) and promoting consistency across pre-trial and trial documentation. The timeline for document submission could then coincide with the declaration and request for additions or corrections.	Please see the response to the comments of Virginia C. Lindsay above. The working group declined to make the suggested change as the lists are intended to be a resource for both the court in preparing the clerk's transcript after trial and for the attorneys in reviewing either the minutes and docket entries for preliminary proceedings or the clerk's transcript of the trial proceedings and reporter's transcripts before submitting requests for additions and corrections. This would not be possible if the lists were not submitted until after these steps in the record preparation process were completed.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists***	

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	and to distribute the lists to counsel with the reporter's transcript appropriate? Yes	Please see the response to the comments of Virginia C. Lindsay above.
Superior Court of Orange County	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** No.	Please see the response to the comments of Virginia C. Lindsay above.

Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** There should be no blanket rule because the demands on trial counsel during trial are extreme. Any such requirement will inevitably run up against obvious errors which must be corrected in a capital case, regardless of trial counsel's failure to spot mistakes.	The working group is not proposing a timeframe for making corrections at this time.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Review of daily transcripts.** Penal Code section 190.8(c) Errors or omissions should not be required to call attention to errors or omissions in the daily transcript until a specified time after a death sentence has been imposed.	As noted in the invitation to comment and by the commenter, Penal Code section 190.8 establishes the requirement that trial counsel bring errors in the daily transcripts to the attention of the court during the course of a trial. This requirement cannot be changed by Rule of Court.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
	While trial counsel is required to submit errors and omissions to the court during trial, as a practical matter these issues are frequently not addressed until after trial. The trial court does not want to keep a jury waiting in order to address these issues during the trial. Additionally, the trial court is frequently called upon to address other issues that come up during a trial and often does not have time to correct the record during the trial.	
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	I recommend additional rule proposals concerning requests for corrections to the daily transcript. Specifically, there should be a timetable for such requests, and they should be submitted within one to two weeks after receipt of the transcript, when the testimony is fresher in the minds of all concerned. Further, Rule 1.150 of the Rules of Court should be amended to expressly permit counsel to use personal recording devices as a tool to assist in preparing their requests for correcting the transcript.	The working group is not proposing a timeframe for making corrections at this time. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. Based on the comments received, specifying a timeframe within which counsel must call the court's attention to errors or omission in a daily transcript does not appear to be an uncontroversial minor substantive change. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, to expedite the certification and accuracy process.	Please see the response to the comments of Michael Ogul above.
Superior Court of Orange County	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, with flexibility.	Please see the response to the comments of Michael Ogul above.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, this would be helpful to include.	Please see the response to the comments of Michael Ogul above.

Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. [P]owerpoints used during arguments. . . . are all documents which somehow are often not included in the ROA, even though they are present in the court file. The additions to the rules listing these items . . . will all make the process of record correction more efficient.	The working group appreciates this input.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Variety of electronic media, rule 4.230(e).** The current proposed rule 4.230(e) does not adequately cover the variety of electronic media used in capital trials. Since the rule is intended to include all manner of visual presentations of information to the jury during jury selection and trial, we suggest the following modification of the proposed rule, with the suggested insertions in bold (and we suggest striking the word "similar" as extraneous): Primary counsel must provide the clerk with copies of any visual aids used in presentations to the jury **or during jury selection**, including PowerPoint, **videos, digitally projected photographs, spreadsheets** or other similar digital or electronic presentations. If a visual aid is oversized, a photograph of that visual aid must be provided in place of the original. For PowerPoint or other digital or electronic similar presentations, counsel must supply both a copy of the presentation in its native format, **including any audio or video played for the jury**, and printouts showing the full text of each slide **or image**.	In response to this and other comments, the working group has made several changes to the proposed amendments to rule 4.230, including: • Adding a proposed new subdivision clarifying that the requirements of existing rule 2.1040, regarding electronic recordings presented or offered into evidence, must be followed, including when such electronic recordings are incorporated with a PowerPoint or other digital or electronic presentation; • Clarifying the working group's intent that these requirements apply to audio as well as video aids; • Clarifying the working group's intent that these requirements apply to presentations made during jury selection; and • Clarifying that the photographs and printouts provided under this subdivision must not exceed 8 ½ by 11 inches in size.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Rule 4.230(e): This provision should explicitly state, "This requirement applies to any visual aids used in any presentation at any time any juror is present, including jury selection, the taking of testimony, or presentation of any opening statements, closing arguments, or other arguments."	Please see the response to the comments of the Office of the State Public Defender above.

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

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	Rule 8.610(a)(1)(Q): As with Rule 4.230(e), above, this provision should explicitly state, "This requirement applies to any visual aids used in any presentation at any time any juror is present, including jury selection, the taking of testimony, or presentation of any opening statements, closing arguments, or other arguments."	To make the relationship between rule 4.230(f) and rule 8.610(a)(1)(Q) clearer, the working group has revised the latter to replace the description of the visual aids to be included with a reference to visual aids provided to the clerk under rule 4.230(f).
Superior Court of Los Angeles County	***Are any of the proposed additions to the clerk's transcript unnecessary?*** Yes as to item Q. If a visual aid it is not an exhibit to the case, the court shouldn't be required to track and account for it. All other documents and items listed, we currently provide.	In the experience of members of the working group, the types of visual aids described in proposed new rule 8.610(a)(1)(Q) are frequently needed for purposes of the appeal and must often be added to the record through augmentation motions. As noted in the invitation to comment, one of the general premises of the working group's recommendations is that it is preferable for necessary items to be included in the record early in the record preparation process. The working group therefore concluded that it would be preferable to include these visual aids in the record from the outset of the record preparation process, rather than requiring counsel and the court to identify that they are missing, file and rule on an augmentation motion, and add them to the record late in the record preparation process.
Superior Court of Orange County	**Rule 8.610:** Contents of the record	

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	The working group is proposing additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript in capital cases. Proposed additions to this list include: • Visual aids used in presentations to the jury; Comment: If this rule is to be implemented then a concurrent rule of court should be added to compel trial counsel to submit visual aids to the court in a format that can be easily printed on 8 ½ by 11 inch paper. ***Should any other items be included in the clerk's transcript?*** If visual aids used in presentations to the jury are to be included in the record on appeal, then an enforcement mechanism in the Rules of Court should be added to compel trial counsel to submit such to the clerk for filing.	As a companion to proposed rule 8.610(a)(1)(Q), the working group is proposing new rule 4.230(f), which would require counsel to supply these visual aids. The working group has modified proposed new rule 4.230(f) to specifically require that the photographs and printouts required under this rule must not exceed 8 ½ by 11 inches in size.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Are any of the proposed additions to the clerk's transcript unnecessary?*** Visual aids used in presentations to the jury if never marked for identification seem unnecessary.	Please see the response to the comment of the Superior Court of Los Angeles County above.
Kristin Traicoff Attorney Sacramento, California	I believe one change needs to be made concerning the contents of the record on appeal. Proposed Rule 8.610(a)(1)(Q) proposes to include in the record all visual aids shown to the jury, including digital media such as PowerPoints. The relevant text of the proposed rule reads, "Any visual aids used in presentations to the jury,	The working group appreciates the commenter pointing out that what it is recommending be submitted to the court under rule 4.230 is not the same as what it is recommending be included in the clerk's transcript under 8.610(a)(1)(Q). The working group discussed this distinction and agrees that this is an issue that needs to be

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	including PowerPoint and other similar digital or electronic presentations. . . .For PowerPoint or other similar presentations, printouts showing the full text of each slide must be included." This differs, however, from what is requested from counsel in the proposed form "Capital Case Attorney Trial Checklist" where, at Task #4 on p. 1, it requires attorneys to provide the court with the following: "For PowerPoint or other similar digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides." While the form requests counsel provide to the court electronic media in their native format, the proposed rule would not require the Clerk to make the native format part of the record on appeal. I believe this is erroneous and that electronic media must be included in their native format at part of the record on appeal, as a matter of course. Electronic versions of media such as PowerPoint presentations often contain elements that cannot be captured by paper printouts: animations, graphics, videos, and sound. Each of these may create an effect in the viewer (i.e., the factfinder) that prejudiced the defendant in a manner that would not be revealed by mere examination of the paper printouts alone: for example, a sentimental hymn being used as audio for a victim impact PowerPoint in the penalty phase, or an animated graphic of puzzle pieces magically fitting together on which the prosecutor relies when describing the reasonable doubt	addressed. However, currently, the clerk's transcript is structured as a compilation of paper documents; it is not structured to contain electronic or digital presentations in their native format. Modifying the rules to restructure the clerk's transcript or to establish a separate process for including these items in the record on appeal would be a major substantive change to the Rules of Court. Under rule 10.22, such substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. In addition, this issue arises not only in capital cases, but also in non-capital criminal cases and civil cases as well, and thus the working group's view is that a comprehensive look at how this issue should be addressed is warranted. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	standard in his guilt-phase closing argument. In short, the record should contain, to the fullest extent possible and at the very least, a faithful recreation of those items the factfinders received and considered in the course of the trial, including all aspects of digital media shown to them, as those elements may very well be material to a claim that the defendant is owed a new trial as a result of prejudicial errors. Proposed Rule 8.610(a)(1)(Q) should therefore be amended to include all language at Task #4 of the proposed "Capital Case Attorney Trial Checklist."	

Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
California Lawyers Association Committee on Appellate Courts, Litigation Section Saul Bercovitch, Director of Governmental Affairs Kelly Woodruff San Francisco, California	The Committee[] believes the proposed changes regarding inclusion of documentary exhibits in the clerk's transcript are not sufficient and do not advance the stated purpose of streamlining the record preparation and certification process. The Working Group proposes to amend Rule 8.622 to provide that, after delivery of the record to defendant's appellate counsel, any party may request that documentary exhibits admitted, refused, or lodged in the trial court be added to the record. The proposal, however, would require the requesting party to provide a justification for including any documentary exhibits in the record. The Committee	Please see the discussion of this topic in the body of the report. The committee considered all of the comments received on this issue and, by an extremely close vote, it was decided to recommend adoption of the proposed amendments to rule 8.622(a)(1)(A) as circulated for public comment. It is anticipated, however, that the working group will consider other ways to potentially address at least one of the concerns that commenters suggested warranted including all documentary exhibits in the clerk's transcript – how best to facilitate state habeas corpus counsel's access to exhibits.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	strongly believes that all documentary exhibits should automatically be included in the record at the outset and no justification should be required. We note that the Working Group had considered making it automatically permissive or even mandatory to include documentary exhibits in the record, but ultimately concluded that "requiring a justification for inclusion of exhibits in the record on appeal was preferable because inclusion of exhibits that are not relevant to the issues on appeal would make these records even larger, increasing record review time and storage costs." (Invitation to Comment, p. 9.) The Committee believes that the alternative proposal considered by the Working Group is far preferable to the proposed changes to Rule 8.622. As the Working Group noted, the proposed overhaul of the rules governing record preparation in death penalty cases is based on two main premises: (1) it is more efficient for necessary items to be identified and included in the record from the outset, and (2) the trial courts and trial counsel are in the best position during and immediately after proceedings to identify and include necessary items in the record. (Invitation to Comment, p. 4.) Both of these premises should lead to a rule that includes all documentary evidence in the record at the outset. It is reasonable to assume that all documentary exhibits offered in evidence at trial were considered relevant by at least one of the parties. Therefore, it would be much	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	more efficient to have all such exhibits included automatically in the record rather than requiring a party to file an inevitable request to add exhibits to the record and requiring the trial court to hold a hearing to address the issue. While including all documentary exhibits in the record at the outset may increase the size of the record, it will not increase record review time as appellate counsel will need to review all documentary exhibits regardless to determine whether to request that any exhibits be added to the record. Further, trial courts and trial counsel are in the best position to ensure that all documentary exhibits admitted, refused, or lodged are included, and that none inadvertently get overlooked. Trial counsel should not be tasked with the responsibility of determining what exhibits may or may not be relevant to issues on appeal or in habeas proceedings; appellate counsel with expertise in making those determinations should have the final say. However, requiring appellate (and habeas) counsel to determine what exhibits may be relevant to issues on appeal or habeas shortly after getting the record is unrealistic, and potentially raises due process issues for the defendant. If exhibits are not automatically made part of the record initially, Appellate (and habeas) counsel may not recognize that a particular exhibit is relevant and may overlook an opportunity to raise an issue on appeal or investigate a claim on habeas. Further, if new evidence comes to light later (sometimes many years later), it can be difficult, if not impossible, to locate the trial exhibits. This is especially important in capital	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	cases where someone's life is at stake. The Committee therefore recommends adding "any exhibit admitted in evidence, refused, or lodged that is a document in paper or electronic format" to Rule 8.610 governing the contents of the record. Alternatively, the Committee recommends deleting "The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript" from the proposed new subsection (A) to Rule 8.622(a)(1). We appreciate your consideration of the Committee's comments. Please do not hesitate to contact us if you have questions or would like to discuss these comments further.	
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Exhibits** Documentary exhibits should be part of the record on appeal and available to appellate counsel, as should any non-documentary exhibits, upon a showing that they are necessary to the appeal. Exhibits (particularly defense exhibits) that are not received because the court denied a request should be lodged with the court as a court's exhibit, to make a record.	Please see the response to the comment of the California Lawyers Association above.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should any other items be included in the clerk's transcript?*** All documentary exhibits should be included in the record and reproduced for use during the appeal. It would be more efficient to simply include them rather	Please see the response to the comment of the California Lawyers Association above.

Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	than require their inclusion be specifically justified. The exhibits are necessary to understand the testimony set out in the reporters' transcripts. The number of such exhibits in most cases is relatively small and in any case, they are a necessary part of the record on appeal. ***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Defense counsel will need to examine each and every exhibit in order to rule out or identify appellate issues. S/he will often need copies of the exhibits to understand the testimony of witnesses. Sometimes the need for an exhibit does not become clear until a legal issue is partially developed. The need to obtain copies of exhibits during the briefing process leads to substantial delays in the filing of opening briefs. To the extent that exhibits can be easily photocopied, it will be most efficient to automatically include them in the record without requiring justification.	
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Documentary exhibits, rule 8.610(a).** We think that written and electronic exhibits should be included in the clerk's transcript in all death penalty appeals. Frequently, documentary exhibits are critical to issues in post-conviction litigation. As presently written, revised proposed rule 8.610(a) does not specify that documentary or electronic exhibits be included in the clerk's transcript. Instead, the inclusion of exhibits in the	Please see the response to the comment of the California Lawyers Association above.

Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	record is a discretionary choice made by the trial court. Revised proposed rule 8.622(a)(l) provides that any party "may" request that exhibits be added to the record and requires that the request include a statement of "the reasons that the exhibit needs to be included in the clerk's transcript." Including all documentary and electronic exhibits in the clerk's transcript does create some additional work for the clerk in the initial production of the record. However, in the long run, it will provide a net benefit to the efficient and orderly review of the typical case. First, each reviewing court will have easy access to, and a ready ability to reference, the exhibits. Second, state habeas counsel (and federal habeas counsel if the case proceeds on) will also have efficient access to the exhibits. Third, many times the reason that an exhibit needs to be in the record is not apparent at the time of initial record production and only becomes clear later. Given that both state habeas counsel and the reviewing courts will be under intense time pressure as a result of the Proposition 66 deadlines, the elimination of the time and effort necessary to track down exhibits later in post-conviction litigation will be of benefit to all parties and the system as a whole and may ultimately reduce the overall demands on the trial court clerk, who will not have to locate and add exhibits to the record years after the judgement was entered.	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	Consequently, we believe that revised proposed rule 8.610(a) should include all documentary and electronic exhibits, whether admitted, lodged, or rejected, as a standard item included in the clerk's transcript.	
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	In regards to the question whether copies of the exhibits should automatically be included in the Clerk's Transcript, I recommend that all exhibits should be included in the Clerk's Transcript without requiring any justification from trial counsel unless the exhibit was withdrawn. The mere fact they were offered or admitted should be sufficient by itself because, by definition, it would then pertain to potential issues that are cognizable on appeal (i.e., either the particular exhibit is part of the evidence or its exclusion is an issue itself). **Rule 8.622(1)(A):** Delete the 4th sentence: "The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript." Or modify it to read "If the exhibit was neither offered nor admitted in evidence, the requesting party must state the reason that the exhibit needs to be included in the clerk's transcript."	Please see the response to the comment of the California Lawyers Association above.
Superior Court of Los Angeles County	***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Requiring a justification would be helpful.	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
Superior Court of Orange County	**Rule 8.622:** The working group is also proposing that rule 8.622 be amended to provide that, at the time the record is reviewed for accuracy, counsel could request that copies of particular documentary exhibits be included in the clerk's transcript. Currently, rule 8.610(a)(3) provides that all exhibits are considered part of the record on appeal, but that they may only be transmitted to the court at the time oral argument is set, which is after all briefing is completed. The proposed amendment would allow copies of key documentary exhibits to be included in the clerk's transcript, making it easier for counsel to cite to these exhibits in their briefs. The working group would particularly appreciate comments about whether counsel should be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, whether the rule should include more specifics about what needs to be shown to justify such a request. Comment: If added then the trial courts will be stuck with increasing costs. For this, and other reasons: 1. The rule should not be mandatory but rather discretionary with the final say resting with the judge. 2. Counsel should be obligated to provide a justification which goes beyond mere convenience. 3. Counsel should be obligated to pinpoint exactly only the relevant portions of the exhibit to be included.	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request? Yes. Appellate counsel is now in the habit of requesting that all documentary exhibits be included in the record on appeal despite the Rules of Court already deeming those exhibits as included. Appellate counsel does not request these items for completeness and accuracy reasons; rather, their argument is one of convenience. What is convenient for them is not convenient for the court staff nor is it friendly towards trial court budgets. More often nowadays, cell phone records are introduced at trial as documentary exhibits. This could constitute between 300 and 1,000 pages. Dumping just one exhibit into the record could then add 2,700 or 9,000 pages, as nine copies of the record on appeal are required. Thus, these types of requests expand the record on appeal almost exponentially from the trial court's perspective. If trial counsel is to be given the authority to request documentary exhibits for inclusion in the record on appeal, then three things should be required. First, a court should retain discretion as to whether to add the documentary exhibits; that is, the rule should not be mandatory. Second, the party requesting inclusion should provide pinpoint requests and not simply request	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	that a large documentary exhibit be added. There is no reason why counsel cannot request that some pages be added rather than all. Third, counsel requesting the inclusion of documentary exhibits should be required to provide a justification as to why the exhibit or portions of the exhibit is relevant that goes beyond for their own convenience. Proposition 66 did not provide additional funding to the trial courts and adding documentary exhibits will increase costs to the trial courts.	
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Yes	Please see the response to the comment of the California Lawyers Association above.

Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	With regard to the contents and length of the record, it is surprising that the proposal would reenact a notorious deficiency of the present system. Existing Rule 8.610(a)(1)(P), to be renumbered (V) in the proposal, requires inclusion in the record of "each juror questionnaire, whether or not the juror was selected." In a capital case, a large number of venire members	The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. It is the understanding of working group members that the questionnaires of all potential jurors are

Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	(incorrectly called "jurors" in the present language) may be summoned and fill out questionnaires. The total can be voluminous, but the questionnaires of venire members who never made it to voir dire are irrelevant. The proposal would merely move the present language to new paragraph (R) without change. The questionnaires of seated jurors and members of the venire who were challenged or excused over objection matter. The questionnaires of those who never made it to the box do not. The length of the record and the resulting alterations in deadlines should not depend on the inclusion of voluminous, irrelevant material. Paragraph (R) should be changed to include only possibly relevant questionnaires.	sometimes relevant to issues on appeal, such as challenges to the denial of a change of venue. Therefore, the working group's view is that eliminating the current requirement that all juror questionnaires be included in the clerk's transcript would not meet rule 10.22's standard of being an uncontroversial minor change and thus would need to be circulated for public comment before potentially being recommended for adoption. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. Defense motions, proposed jury instructions, powerpoints used during arguments, documentary exhibits, expert resumes, emails, psych reports and juror information are all documents which somehow are often not included in the ROA, even though they are present in the court file. The additions to the rules listing these items and the use of forms for motions and jury instructions will all make the process of record correction more efficient. The rules should be further clarified to prohibit trial courts from lumping juror questionnaires into court	The working group acknowledges the commenter's support for these proposed changes. The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court

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Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	exhibits. This is done to avoid the need to itemize the questionnaires in the CT index. This results in delays in reviewing the record and preparing the opening brief, because it makes it very difficult to locate relevant questionnaires. Each questionnaire should be individual listed in the CT index in every case. The proposed changes are not effective in terms of insuring they are properly indexed. ***Are any of the proposed additions to the clerk's transcript unnecessary?*** The suggested additions will all help to make appellate record correction proceedings more efficient.	need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. Adding new requirements for the format of the clerk's transcript would not be an uncontroversial minor change and thus would need to be circulated for public comment. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Rule 8.610(a)(2)(N): This subdivision should be expanded to read: "The oral proceedings on any motion in addition to those listed above, including a motion for modification of a death sentence pursuant to Penal Code section 190.4(e);"	The working group declined to make this suggested change. In the experience of working group members, the oral proceedings on motions for modification of a death sentence under Penal Code section 190.4(e) are already generally included in the reporter's transcript under either current 8.610(a)(2)(N) or (O) so it does not seem necessary to modify the rule to specifically identify the oral proceedings on these motions as needing to be included in this transcript.
Superior Court of Orange County	**Rule 8.610:** **Contents of the record** The working group is proposing additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript in capital cases. Proposed additions to this list include:	

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Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	• Court-ordered diagnostic or psychological reports required under Penal Code section 1369; Comment: This is already included in the record as standard operating procedure. Not necessary. • The table correlating juror's names and identifying numbers; and Comment: Already included in the record as standard operating procedure. Not necessary. • Documents filed or lodged under Penal Code sections 987.9 or 987.2. Comment: Already included in the record as standard operating procedure. Not necessary. ***Are any of the proposed additions to the clerk's transcript unnecessary?*** Yes. Documents filed or lodged under Penal Code 987 are already necessary to include in the record when they exist. The same is true with a table correlating juror's names and identifying numbers. Court ordered diagnostic or psychological reports are already included in the record on appeal.	The working group appreciates that this commenter and likely other courts do regularly include these items in the record on appeal in capital cases. However, in the experience of members of the working group and, as evidenced by some of the other comments, not all courts are clear that these items should be included in the record. Amending the rule to clarify that these items should be included in the record will help ensure that more complete records are prepared from the outset in all capital cases.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should any other items be included in the clerk's transcript?*** No	The working group appreciates this input.

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Rule 8.611. Juror-Identifying Information		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Contact information of jurors, rule 8.611(b).** Proposed rule 8.611 implements Code of Civil Procedure section 237. That code section requires the clerk to remove juror information from the record but retain it under seal. The proposed rule requires the clerk to delete the juror information but omits the need to retain the information under seal, potentially causing confusion or inconsistency with CCP 237. Thus, we suggest adding subdivision (b)(3) to clarify: "The names, addresses and numbers of trial jurors and alternates sworn to hear the case shall be retained under seal until further order of the court."	Proposed new rule 8.611(b)(2), which is modeled on existing rule 8.322, addresses Code of Civil Procedure section 237's requirement by providing that "[t]he superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers." The working group's view is that this language is sufficient.
Superior Court of Orange County	**Rule 8.610(c):** ***New rule regarding juror-identifying information.*** Rule 8.610(c) currently contemplates that courts will comply with the requirements of rule 8.332, which addresses the removal of juror-identifying information from the record on appeal in noncapital felony cases. However, rule 8.332 does not clearly apply in capital cases**.** To prevent any confusion, the working group is proposing the adoption of new rule 8.611, which would specifically address the removal of juror- identifying information in the record on appeal in capital cases. Comment: This is a training issue for the judicial council to work with the trial courts on. It does not need a new rule of court.	The working group's view is that having a rule that specifically addresses this topic in the context of capital cases will make the clerk's duties clearer.

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Joint request for corrections / Meet and Confer** Counsel should also be permitted meet and confer to occur via email. That way the attorneys can communicate even if their daily schedules prevent them from speaking directly.	In response to this and other comments, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer. The working group has also removed the requirement that this take place in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** It will differ from case to case. Such meetings are best left informal. State-wide micromanaging is not desireable. ***When should the meet-and-confer process take place at each of these stages?*** It depends on the specifics of each case.	The working group believes that a requirement that counsel confer is likely to expedite the record correction process by encouraging agreements regarding some corrections or additions to the record and so has maintained this requirement in the proposal. However, as noted in the response to the comments of Michele Hanisee above, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this take place in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Meet and confer procedure.** This may or may not be productive depending on the dynamics of the relationship between trial counsel and the prosecutor. In some cases, it may actually add to the time it will take to settle the record. Additionally, as a practical matter trial counsel does not have the time to meet and confer during the trial or preparation phase.	The working group acknowledges that the relationship between defense counsel and the prosecutor shortly after the imposition of a death sentence may be difficult. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness, which require that the trial record be reviewed by trial counsel shortly after the imposition of a

Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
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	Additionally, even if counsel were to meet and confer, the trial court will still be required to have a hearing to reconcile disagreements between trial counsel and the prosecutor. It is unlikely this provision will save the court any time. A meet and confer will clearly require more time of counsel and still require the Court to rule on the requested corrections.	death sentence. The proposed requirement that counsel confer is intended to improve the efficiency of this required process by encouraging discussion and possible agreements regarding some corrections or additions to the record. The working group has therefore maintained this requirement in the proposal. However, as noted in the response to the comments of Michele Hanisee above, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this be in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Meet and confer requirement, proposed rule 8.622(a)(3).** The parties should be able to fulfill the meet and confer requirement by any means they deem effective and efficient. Thus we recommend the following addition to rule 8.622(a)(3)(addition in bold): "... defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person, by telephone, **or by any other means of electronic communication,** to discuss . . .	In response to this and other comments, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this be in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	I strongly disagree with the proposal to impose "meet and confer requirements". Having successfully convinced the prosecution to drop the death penalty in well over 20 capital cases, I entirely agree with the need to get along with opposing counsel whenever possible. However, the	See response to the comments of the Los Angeles County Public Defender above

Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	meet and confer requirements would apply only during the record correction process—only after a death sentence has been pronounced by the jury—when any defense counsel who genuinely cares about their client will not want to meet and confer with the prosecutor who obtained a death verdict against that client. Death penalty litigation is not ordinary litigation. No attorney should represent a death penalty defendant unless that attorney understands that person's humanity and genuinely cares about that client. No attorney can possibly understand the mitigating circumstances about their client's life or be able to present them to a capital jury unless that attorney has taken the time and made the effort to understand their client's life history, including having spent hundreds of hours with their client. And any attorney who has suffered a death sentence is not going to simply forget that this very same prosecutor has produced a death sentence against that client, and then be at their productive best in a personal meeting with that prosecutor. If anything, any such meeting should be limited to electronic communications. **Rule 8.613(f)(3):** I object to this subdivision in its entirety. It should be deleted. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …."	

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	Rule 8.619(b)(1)(A): Please delete "including meeting and conferring with opposing counsel;" Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Rule 8.622(a)(3):** Please delete this subdivision entirely. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Form CR-600, box 7, Meet and confer:** Delete this box entirely. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Form CR-605, box 9 (page 3):** Delete this box entirely.	

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Commenter	**Comment**	**Working Group Response**
	Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …."	
Superior Court of Los Angeles County	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** Yes.	The working group acknowledges the commenter's support for this requirement. Please see the response to the comments of Michele Hanisee above for changes the working group made to this aspect of the proposal.
Superior Court of Orange County	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** It should be understood, that based on experience, trial counsel is reluctant to participate in record correction and accuracy proceedings.	The working group acknowledges that the relationship between defense counsel and the prosecutor shortly after the imposition of a death sentence may be difficult. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness, which require that the trial record be reviewed by trial counsel shortly after the imposition of a death sentence. The proposed requirement that counsel confer is intended to improve the efficiency of this required process by encouraging discussion and possible agreements regarding some corrections or additions to the record. The working group has therefore maintained this requirement in the proposal.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial***	

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy? It should only be required if any of counsel fail to serve and file a declaration of task performed, stating the transcripts, minute orders, and court file were reviewed and then detail all request for additions or corrections. ***When should the meet-and-confer process take place at each of these stages?*** If any additions or corrections are requested at any stage.	Please see the response to the comments of the Superior Court of Orange County above. This suggested timing would be very difficult at the preliminary proceedings and certification for completeness phases because the judge has only 30 days to review all requests for correction and to certify the record, so there is little time for additional input from counsel. The working group therefore did not modify the proposed timeframe for the meet and confer in these phases of the record preparation process.

Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Joint request for corrections / Meet and Confer** The parties should each have to file a motion in which they delineate which corrections are agreed upon, and which are not.	The working group declined to add a requirement for a motion. Counsel can indicate either in separate or joint requests for corrections what corrections are and are not agreed upon.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** This is a ridiculous proposal. Prop 66 did not abolish the adversarial system.	The working group's view is that even within adversarial processes, parties on opposite sides may agree on issues. An optional joint request for corrections is simply a vehicle for conveying to the court if there is agreement on items to be corrected in the record.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Likewise, counsel should not be required to submit joint requests for corrections to the reporter's or clerk's transcript. If opposing counsel agrees with the requests submitted by the other party, they can say that. But insisting upon or even formally encouraging such joint requests is not appropriate after a death sentence due to the realities of the tolls of the litigation. **Rule 8.613(g)(1)(C):** I suggest this subdivision should be modified to read as follows: "The requirement of this subdivision may be satisfied by a joint statement or request filed by counsel for all parties." **Rule 8.619(b)(1)(C):** As with Rule 8.613(g)(1)(C), above, this subdivision should be modified to read as follows: "The requirement of this subdivision may be satisfied by a joint statement or request filed by counsel for all parties."	The working group has modified the proposal consistent with the commenter's suggestion to more neutrally indicate that a joint statement or request may be submitted.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No. The efficacy of requiring a joint request may be limited, since appellate counsel often ask for changes that are not part of the record.	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.
Superior Court of Orange County	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No. In our experience, the District Attorney or Attorney General very rarely submit a list of corrections as thorough as defense trial or appellate counsel. The bulk of corrections come from appellate counsel and a joint request is likely to add delay.	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.

Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney	Corrections of typographical errors, <u>especially of all proper nouns and all numbers</u>, are crucial to enable	The inclusion of the proposed language regarding typographical errors is intended to track Penal Code

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

Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
California Appellate Project San Francisco, California	appellate counsel to conduct electronic searches of the record on appeal, which is how lawyers work these days. Fortunately, there are fewer and fewer typographical errors because of the use of computers with spell check. I have even seen cases where there was not one typographical error in the ROA. Given the ease with which errors can be corrected – at the stroke of a key -- the emphasis on restricting typographical corrections is a throwback to another century. It is an insult to the professionalism of court staff to say that typographical errors are okay, when they can easily avoid them. It is more efficient to correct spelling errors because it enables accurate digital searches of the record on appeal, rather than forcing counsel to spend hours scanning each page of the record.	section 190.8(c), which provides that "[c]orrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion." In response to this and other comments, the working group has modified the proposed rule language to provide only that immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. This will permit counsel to bring to the court's attention errors, such as the spelling of witness names that are important to correct for reasons other than potential confusion, such as facilitating ease of searching, while still making clear that not all typographical errors need to be brought to the court's attention. While court reporters can easily correct such errors, it still takes counsel, court, and court reporter time and resources to identify, rule on, and make requested corrections.
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Modification of language to include search functions, rule 8.622(a)(l)(A)** Most obvious typographical errors do not cause confusion but some may undermine the ability to conduct full text searches. For example, the incorrect or inconsistent spelling of a proper name, not uncommon, undermines the ability to electronically search for references to that individual. Such errors should be corrected when detected. We offer the following modification of a sentence in proposed revised rule 8.622(a)(l)(A)(addition in bold): "Immaterial typographical errors that cannot conceivably cause confusion **or hinder the ability of a party to perform**	Please see the response to the comments of Virginia C. Lindsay, above.

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

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
	an electronic search of the record are not required to be brought to the court's attention or corrected."	

Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	The background information notes on page 3 that under current law, "[u]nless an extension of time is granted, the court is required to certify the record for accuracy no later than 120 days after the record was delivered to appellate counsel." Yet, on page 4, it is noted that a third of the present delay "on average, approximately two years, elapses between the appointment of appellate counsel and the filing of the record." Few, if any, other states tolerate such long delays. The problem must be approached with the clear-eyed understanding that needless delay has become routine, whether through negligence or malice, and courts have failed to put a sufficient priority on timeliness to stop it. Proposed Rules 8.619(b)(2) and 8.622(a)(4) provide automatic extensions of time for correction requests for cases with long records for the completeness and accuracy certifications, respectively. That is not a problem in itself, provided the issue of unduly inflated records is addressed, as discussed below, but then other rules make even the extended limit a mirage.	The working group is recommending changes to the rules with the intent of trying to reduce the need for corrections, and thus the time spent on the certification for accuracy process. However, as a general matter, the working group notes that the bulk of the time that elapses during the overall record preparation process is not during this process nor during the certification for completeness, during which the extensions addressed by the commenter may occur, but after certification for completeness has been completed and before the process for certification for accuracy can begin because appointment of appellate counsel is pending. The recommended changes to these rules are intended to reduce counsel and court time spent on preparing and ruling on requests for extension that, under the existing statutes and rules, are recognized as warranted. This should free up counsel and court time and resources to work on other important aspects of these cases.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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

Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
	Rules 8.619(e)(1) and 8.622(d)(1) grant open-ended authority to the court to grant extensions of time. The standard for an extension is only the minimal "good cause." The proposed changes to Rules 8.619(c)(7) and 8.622(b)(4) then start the clock for the court's deadline at the date of the last change. With no overall cap, the trial court is empowered to extend its own deadline indefinitely by granting overly generous extensions to counsel. The wording also fails to specify a deadline if counsel does not make a correction or makes it after the time set by the court. In short, the present system of deadlines is too loose, and the proposal makes it even looser instead of tightening it up. Penal Code section 1239.1, subdivision (a) indicates the kind of language that is in order here. The section applies to briefs in the Supreme Court, but the record completion is part of the same process, and the same priorities apply. The rule should state that it is the duty of the court to expedite the process and that extensions should only be granted for compelling reasons. "I am too busy with my other cases," is not a good enough reason. The overall time caps in the existing rules should not be abandoned, but instead an enlarged overall cap should be retained as a "whichever is earlier" or "but in no case more than . . . " alternative to the proposed limit. The court should also be empowered to deal with cases of intentional or seriously negligent delay. Monetary	Penal Code section 190.8 establishes the "good cause" standard for granting extensions of time for the certification of the record for completeness and accuracy. The working group's view is that this standard is also appropriate for requests for extension of time by clerks, court reporters, and counsel that may be made during these certification processes. Current rule 8.600(c), which would be renumbered as rule 8.608(b) under this proposal, requires that when a trial court is permitted to extend timeframes for the record preparation process, the court must consider the relevant policies and factors stated in rule 8.63. Among other things, these policies make clear that the deadlines in the rules should generally be met, that the court must take into consideration the degree of prejudice that might be caused to other parties by granting an extension, and specifically provide that mere conclusory statements that more time is needed because of other pressing business will not suffice to justify an extension of time. The working group's view is that, under the policies and factors in rule 8.63, it is unlikely that trial court judges will grant unwarranted extensions of time to prepare the record. With respect to the proposed amendments to rules 8.619(c)(7) and 8.622(b)(4), the working group notes that these changes operate to give the trial judge 30 days to rule on any requests for correction and certify the record, which is the same period of time the judge has if no extensions of time are granted to the clerk, court reporters, or counsel. Without this change, if timeframes

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

Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
	sanctions should be expressly authorized for such situations.	for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel has completed their review of these transcripts. This would necessitate the trial judge taking time out of his or her substantive work to request an extension of time to certify the record and for the court to rule on this request. Penal Code section 190.8(a) already gives trial courts authority to impose sanctions to ensure compliance with all applicable statutes and rules of court pertaining to record certification in capital appeals and thus this topic need not be addressed in the rules. In addition, existing rule 8.23 provides authority to impose sanctions on clerks or court reporters if they fail to perform any duty imposed by statute or the appellate rules that delays the filing of the appellate record, which would include the failure to timely prepare a transcript or make ordered corrections to the record.
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Deadline for certification** The deadline should start running at the time of sentence, not when the parties submit corrections to the court. If the attorneys are not under deadline to do the corrections to the record, it will not get done timely. The parties should be able to request extensions for good cause due to length of record, or due to other scheduling issues.	The proposed amendments to rules 8.619(c)(7) and 8.622(b)(4) operate to give the trial judge 30 days to rule on any requests for correction and certify the record for completeness and accuracy, respectively. Under both the existing and proposed rules, clerks and court reporters are under deadlines to prepare the record and counsel are under deadlines to review and request corrections to the record. However, they can, for good cause, request

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
		extensions of these deadlines. Without the amendments to rules 8.619(c)(7) and 8.622(b)(4), if timeframes for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel has completed their review of these transcripts. This would necessitate the trial judge taking time out of his or her substantive work to request an extension of time to certify the record and for the court to rule on this request.

Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Items under seal** A review of all items under seal should be undertaken by the trial court and trial counsel as part of the certification of the record. Most items will no longer need to be sealed after a verdict is reached. The court should identify confidentially to each party – what records remain under seal that were filed by that party, and request briefing as to any that the party is requesting remain under seal. **Correction of Reporters transcript** This should only be done by trial counsel. Appellate counsel should not be able to request corrections to the	The working group appreciates this input. Under proposed rule 8.622(a)(1)(B), this review will be conducted by trial counsel and the trial court.

Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
	reporter's transcript absent a showing that there is a material error that would significantly affect the outcome of the appeal.	
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Identifying any omissions in the record sooner than later** This may or may not result in improved efficiency, and it adds significant duties to trial attorneys at a time when they have just experienced a traumatic event (the condemnation of their client). The Working Group ignores the mental state of trial attorneys immediately after having a client sentenced to death. S/he is not necessarily going to be in a proper state of mind to immediately review the record. In addition, conflicts of interest may interfere with judgements concerning what to include in the record on appeal. But it is true that memories will be fresher.	The working group acknowledges that shortly after the imposition of a death sentence may be a difficult time for defense counsel. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness which require that the trial record be reviewed by trial counsel shortly after the imposition of a death sentence. The proposed rules and forms are intended to improve the efficiency of this statutorily-required process.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	**Rule 8.622(e):** Query: why doesn't counsel for the parties get a copy of the clerk's transcript??? Or is that in another rule??	Under current rule 8.619(g), which would be relettered as 8.619(h) under the proposal, appellate and habeas corpus counsel receive copies of the clerk's transcript that is certified for completeness. Under rule 8.622, appellate counsel participate in the process of certifying the record for accuracy and they and habeas corpus counsel get a copy of the order certifying the record as accurate. In the experience of working group members, changes to the clerk's transcript after the certification of the record for completeness are made by providing additional records in volumes that supplement the transcript that was certified for completeness, rather than by modifications to that

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

Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
		transcript. Counsel will either receive these supplemental volumes as part of the later record correction process or can obtain these from the trial court after receiving a copy of a court order making an addition to the clerk's transcript.

Fiscal and Operational Impacts		
Commenter	**Comment**	**Working Group Response**
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	Implementation of these rules will require significant training of the courts, court staff and lawyers.	The working group appreciates this input.
Superior Court of Orange County	***Would the proposal provide cost savings?*** No.	The working group appreciates this input.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Would the proposal provide cost savings? If so, please quantify.*** Unknown. ***What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.*** Staff training and revising processes & procedures.	The working group appreciates this input.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Fiscal and Operational Impacts		
Commenter	**Comment**	**Working Group Response**
	How well would this proposal work in courts of different sizes? It should work well for all courts.	

Time for Implementation		
Commenter	**Comment**	**Working Group Response**
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	The judicial council should provide a year to implement these rules.	Under amendments to Penal Code section 190.6 adopted as part of Proposition 66, the Judicial Council is required to adopt initial rules designed to expedite the processing of capital appeals and state habeas corpus review within 18 months of the effective date of this initiative. The initiative became effective on October 25, 2017. Thus, the initial rules must be adopted by the Judicial Council no later than April 25, 2019. However, in light of this and other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.
Superior Court of Los Angeles County	***Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes.	In light of other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Six months would be more appropriate.	In light of this and other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Other Comments		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Reference to "disk", rule 8.613(i)(3), rule 8.619(d)(3).** Proposed rule 8.613(i)(3) and proposed rule 8.619(d)(3) involve the delivery of electronic data and refer specifically to a "disk." Assuming that other means of delivery are acceptable (e.g., flashdrives, cloud services, etc.) the rule should not specify a "disk." Thus, we suggest modifying the language to say simply that the transcript in electronic form should be "provided separately and clearly labeled."	Rule 8.45 already addresses the delivery of sealed and confidential records, as well as the labeling of these records. The working group is therefore recommending that rule 8.613(i)(3) and rule 8.619(d)(3) be revised to cross-reference to rule 8.45 for guidance on these issues.
Michael Breton San Francisco, California	Should this actually expedite the processes in which the failing judicial system has already ruled on death penalty cases and to which we cannot execute prisoners who commit violent crimes fast enough to prove a point; life in prison is nothing to these men and women. Execute them quickly and efficiently and no problems would occur.	No response required.
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	The Judicial Council should never forget that a constitutional right of victims of crime is routinely trampled upon in these cases. See Cal. Const. art. I, § 28, subd. (b)(9), Penal Code § 190.6, subd. (d). This violation should be treated every bit as seriously as violations of other constitutional rights. The Council is tasked with correcting the problem to the extent possible. We hope and expect that the final version of this proposal and the forthcoming proposals will demonstrate a high	The working group has taken seriously its charge to recommend rule and form changes to fulfill the Judicial Council's rulemaking responsibilities under Proposition 66.

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Other Comments		
Commenter	**Comment**	**Working Group Response**
	priority for the protection of this right and an awareness of the Council's duty in this regard.	

Item number: 41

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: August 23, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Miscellaneous Technical Changes Amend Cal. Rules of Court, rule 5.552, and the heading of article 2 of chapter 13 of division 3 of title 5

Committee or other entity submitting the proposal:
Judicial Council staff

Staff contact: Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20–21, 2018

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.552, and the heading of article 2 of chapter 13 of division 3 of title 5

Recommended by
Judicial Council staff
Susan R. McMullan, Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
September 24, 2018

Date of Report
August 16, 2018

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective September 24, 2018, amend:

1. Rule 5.552 of the California Rules of Court to correct a typographical error in rule 5.552(b) that erroneously refers to the *Request for Disclosure of Juvenile Case File* as form "7-570" instead of "JV-570"; and

2. The heading of article 2 of chapter 13 of division 3 of title 5 from "Fitness Hearings" to "Hearing on Transfer of Jurisdiction to Criminal Court" to make it consistent with the language in Welfare and Institutions Code section 707 and the amended rules of court.

The text of the amended rule and article heading are attached at page 4.

Relevant Previous Council Action

On May 24, 2018, the Judicial Council approved amendments to rule 5.552 concerning the confidentiality of juvenile court records to implement changes enacted into law from recent legislation, effective September 1, 2018. Following the council action, staff were alerted to a typographical error inadvertently included in the final text of the rule approved by the council in the form of the wrong name for a form referenced in the rule.

In addition, in May 2017 the Judicial Council amended and revoked the rules of court concerning the transfer of those alleged to have committed crimes as juveniles to adult criminal court to implement the changes to the law enacted by the voters via Proposition 57, the Public Safety and Rehabilitation Act of 2016. One of the key changes was to delete references to "fitness" and "fitness hearings" to reflect the changes in the law, which deleted that term from Welfare and Institutions Code section 707 and instead described the process as a transfer of jurisdiction (from juvenile to criminal court).

Analysis/Rationale

To ensure that the error in rule 5.552 is corrected as soon as possible, Judicial Council staff recommend that the council approve a restoration of the correct form number (JV-570) in rule 5.552(b), effective September 24, 2018. The other changes to the rule are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Regarding changes to the rules relating to Prop. 57, although the council removed the term "fitness" from the rules of court themselves, the action taken by the council did not include a change to the heading of the article that contains the procedures to carry forth the transfer of jurisdiction. Thus, staff recommend that the council amend the heading of article 2 from "Fitness Hearings" to "Hearing on Transfer of Jurisdiction to Criminal Court."

Policy implications

None.

Comments

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

These corrections must be made and staff determined that they should be made as soon as possible.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 5.552, at page 4

Rule 5.552 and the heading of article 2 of chapter 13 of the California Rules of Court are amended, effective September 24, 2018, to read:

Rule 5.552. Confidentiality of records (§§ 827, 827.12, 828)

(a) * * *

(b) Petition

Juvenile case files may be obtained or inspected only in accordance with sections 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal subpoena. With the exception of those persons permitted to inspect juvenile case files without court authorization under sections 827 and 828, and the specific requirements for accessing juvenile case files provided in section 827.12(a)(1), every person or agency seeking to inspect or obtain juvenile case files must petition the court for authorization using *Request for Disclosure of Juvenile Case File* (form ~~7~~JV-570). A chief probation officer seeking juvenile court authorization to access and provide data from case files in the possession of the probation department under section 827.12(a)(2) must comply with the requirements of subdivision (e) of this rule.

(1)–(2) * * *

(c)–(g) * * *

Chapter 13. Cases Petitioned Under Sections 601 and 602

Article 2. ~~Fitness~~ Hearings on Transfer of Jurisdiction to Criminal Court