

In the Judicial Council of California
Proposal to Amend Rules 10.500 and 10.620,
California Rules of Court, to Improve Online Access to Public
Data

Proposed by:

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Background

The right of the public to access administrative records and decisions of the judiciary is most conveniently exercised when this information is freely available online. Especially for unsophisticated or unrepresented members of the public, accessing public records by formally requesting them from a judicial officer can be intimidating. Furthermore, once a court has already performed the labor to produce records in an electronic format, all of the public (not just the original requestor) can benefit from that labor and the court can save time not manually fielding requests for it in the future. Finally, online publishing means the public can analyze and index the data in an aggregate fashion to make it more useful (find trends, look for malfeasance, etc.).

Current rules¹ regarding such public access are very limited in their demands of courts and other judicial branch entities to make information available on public websites. This proposal is a first step in requiring more online access.

Proposed Solution

The proposal is two-fold:

- Require judicial branch entities to publish online any administrative records already produced for a requestor in electronic format under Rule 10.500(i).
- Require trial courts to publish online any factual materials regarding administrative decisions that are already required to be made public under Rule 10.620(i).

Potential Problems

This proposal is fairly conservative:

1. The proposal does not require the judiciary to publish administrative records online unless they are already in an electronic format (the conditions of Rule 10.500(i)(1) are

¹ All references to rules herein are to the California Rules of Court.

unchanged by this proposal). Therefore, a large number of records (maintained only in physical form) that the public has a right to access would remain exempt from online publishing.

2. The proposal does not mandate the judiciary publish the records in open, non-proprietary electronic formats. Such formats ensure computer software vendors (that control proprietary formats) cannot restrict or manipulate the public's right of access.
3. The proposal fails to require proactive online publishing of all records that the public has a right to access. Someone would still have to make an initial request and potentially pay for the cost of the initial search and production.

However, such problems can be mitigated by future rule changes that broaden the scope of online publishing requirements incrementally, and these problems do not necessitate a delay in implementing the current proposal.

Need for Urgent Consideration

None known.

Fiscal Impacts

This proposal may both (1) reduce costs of repeated search and production of records requested more than once and (2) increase web hosting costs for storage of records published online. Details of fiscal impact are unknown.

Prior Related Actions

None known.

Contents of Proposed Amendments

Rule 10.500 (i) would be amended to read (~~deletions~~, insertions):

(i) Availability in electronic format

- (1) A judicial branch entity that has information that constitutes an identifiable judicial administrative record not exempt from disclosure under this rule and that is in an electronic format must, on request, produce that information in the electronic format requested, provided that:
 - (A) No law prohibits disclosure;
 - (B) The record already exists in the requested electronic format, or the judicial branch entity has previously produced the judicial administrative record in the requested format for its own use or for provision to other agencies;
 - (C) The requested electronic format is customary or standard for records of a similar type and is commercially available to private entity requesters; and

- (D) The disclosure does not jeopardize or compromise the security or integrity of the original record or the computer software on which the original record is maintained.
- (2) In addition to other fees imposed under this rule, the requester will bear the direct cost of producing a record if:
 - (A) In order to comply with (1), the judicial branch entity would be required to produce a record and the record is one that is produced only at otherwise regularly scheduled intervals or;
 - (B) Producing the requested record would require data compilation or extraction or any associated programming that the judicial branch entity is not required to perform under this rule but has agreed to perform in response to the request.
- (3) Nothing in this subdivision shall be construed to require a judicial branch entity to reconstruct a record in an electronic format if the judicial branch entity no longer has the record available in an electronic format.
- (4) A judicial branch entity that produces information in compliance with (1) must also publish that information on its public Web site. The original requester shall not bear any additional costs associated with such publication.

Rule 10.620 (i) would be amended to read (~~deletions~~, insertions):

(i) Materials

When a trial court is required to seek public input under (b), (c), or (d), it must also provide for public viewing at one or more locations in the county of any written factual materials that have been specifically gathered or prepared for the review at the time of making the decision of the person or entity making the decision. This subdivision does not require the disclosure of materials that are otherwise exempt from disclosure or would be exempt from disclosure under the state Public Records Act (beginning with Government Code section 6250). The materials must be mailed or otherwise be made available not less than five court days before the decision is to be made except if the request is made within the five court days before the decision is to be made, the materials must be mailed or otherwise be made available the next court day after the request is made. A court must ~~either~~ (1) provide copies to a person or entity that requests copies of these materials in writing or by electronic mail to the executive officer of the court or other person designated by the executive office in the notice, if the requesting person or entity pays all mailing and copying costs as determined by any mailing and copy cost recovery policies established by the trial court, ~~or~~ and (2) make all materials available electronically ~~either on its public Web site or by e-mail~~. This subdivision does not require the trial court to prepare reports. A person seeking documents may request the court to hold the material for pickup by that person instead of mailing.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Protective Orders: Gun Violence Restraining Order Forms (approved by council)

Revise Judicial Council forms EPO-002, GV-100-INFO, GV-100, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO.

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Kristi Morioka, 916-643-7056, kristi.morioka@jud.ca.gov

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

Approved by RUPRO: Approved by RUPRO Chair, Justice Hull, on behalf of RUPRO, on September 28, 2018.

Project description from annual agenda: Sb 1200 - Penal Code § 18105 mandates that the council adopt forms to implement provisions in that division of the Penal Code. For the forms that have been adopted to be in compliance with the law, they must be revised to be referred to as "gun violence" restraining orders (rather than the current "firearm" restraining orders); and to reflect that no filing fees are required; and to reflect that the parties must be provided free service by sheriffs.

If requesting July 1 or out of cycle, explain:

At the November 30, 2018 meeting, the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revising these forms with an effective date of January 1, 2019. Senate Bill 1200 (Stats. 2018, ch. 898) was signed by the governor on September 28, 2018, with an effective date of January 1, 2019. Without immediate form revisions, the forms would be out of compliance with the Penal Code, and several important items such as required statutory warnings to restrained persons, free service of process by the sheriff and no filing fees, would not be known to the restrained party or the persons seeking gun violence restraining orders. The forms are now being circulated for comment, and the Civil and Small Claims Advisory committee will recommend any appropriate revisions based on comments received.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT W19-01

Title

Protective Orders: Gun Violence Restraining Order Forms (approved by council)

Rules, Forms, Standards, or Statutes Affected

Revise Judicial Council forms EPO-002, GV-100-INFO, GV-100, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO.

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Action Requested

Review and submit comments by February 12, 2019

Effective Date

January 1, 2019

Contact

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Executive Summary

At the November 30, 2018 meeting, the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revising 22 gun violence restraining order (GVRO) forms to reflect recently enacted legislative amendments that go into effect January 1, 2019. Recently enacted Senate Bill 1200 (Stats. 2018, ch. 898) requires orders under Penal Code section 18100 et seq. to be referred to as gun violence restraining orders, expands the definition of ammunition to include a magazine, prohibits a filing fee for GVRO forms and documents, requires a law enforcement officer to make a specific request when serving a gun violence restraining order, and provides that parties do not need to pay the sheriff for service of a GVRO. The short time frame between the bill passage and implementation date necessitated that the forms be revised without time for public comment before they went into effect. The forms are now being circulated for comment, and the Civil and Small Claims Advisory Committee will recommend any appropriate revisions based on comments received.

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

Background

The Gun Violence Restraining Orders Act,¹ enacted in 2014 and operative January 1, 2016, provided a civil process to obtain a court order requiring a person who poses an imminent significant danger of personal injury to himself, herself, or others to surrender—and prohibiting him or her from possessing—firearms and ammunition before the person uses a firearm to commit a crime. The Judicial Council adopted 23 new GVRO forms, effective January 1, 2016, to implement that act, and there have been minor revisions to the forms since that time to reflect later legislation.

SB 1200 amended the Gun Violence Restraining Orders Act in several ways, effective January 1, 2019, and in order to ensure that the Judicial Council GVRO forms are in compliance with the law in January, the council approved revisions to almost all of the forms at its November 2018 meeting, effective January 1, 2019. The approved revisions are all minor and are expected to be noncontroversial. These revised forms are described in this invitation to comment.²

The Proposal

The Judicial Council has revised the following forms, effective January 1, 2019:

- *Gun Violence Emergency Protective Order* (form EPO-002),
- *Petition for Gun Violence Restraining Order* (form GV-100),
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO),
- *Notice of Court Hearing* (form GV-109),
- *Temporary Gun Violence Restraining Order* (form GV-110),
- *Request to Continue Court Hearing for Gun Violence Restraining Order* (form GV-115),
- *Notice of New Hearing Date* (form GV-116),
- *Response to Petition for Gun Violence Restraining Order* (form GV-120),
- *How Can I Respond to a Petition for Gun Violence Restraining Order?* (form GV-120-INFO),

¹ See Stats. 2014, ch. 872; AB 1014, sometimes referred to as “the Skinner Bill.” (Pen. Code, § 18100 et seq.)

² Separately, the Civil and Small Claims Advisory Committee is proposing new and revised GVRO forms specifically to address the new hearing requirement that SB 1200 has added, to be held within 21 days of issuance of a GVRO. (Pen. Code, § 18148.) Those forms have not yet been approved by the council. They are being circulated separately for comments as ITC W19-____.

- *Gun Violence Restraining Order After Hearing* (form GV-130),
- *Proof of Personal Service* (form GV-200),
- *What Is “Proof of Personal Service”?* (form GV-200-INFO),
- *Proof of Service by Mail* (form GV-250),
- *Request to Terminate Gun Violence Restraining Order* (form GV-600),
- *Notice of Hearing on Request to Terminate Gun Violence Restraining Order* (form GV-610),
- *Response to Request to Terminate Gun Violence Restraining Order* (form GV-620),
- *Order on Request to Terminate Gun Violence Restraining Order* (form GV-630),
- *Request to Renew Gun Violence Restraining Order* (form GV-700),
- *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (form GV-710),
- *Response to Request to Renew Gun Violence Restraining Order* (form GV-720),
- *Order on Request to Renew Gun Violence Restraining Order* (form GV-730),
- *How Do I Turn In, Sell, or Store My Firearms?* (form GV-800-INFO).

Change in form titles

Section 18105 of the Penal Code is amended by SB 1200 to require that all “forms, orders, and documents shall refer to any order issued pursuant to this chapter as a gun violence restraining order,” necessitating a name change for all of the forms that are currently titled as “firearms restraining orders” and revisions to the other GVRO forms where these forms are referenced by name. This change was applied to all of the GVRO forms the Judicial Council approved to be revised.

Expanded definition of ammunition

Section 18100 of the Penal Code is amended by SB 1200 to expand the definition of ammunition to include a magazine as defined in Penal Code section 16980, which is “any ammunition feeding device.” The statutory amendments also required expanding the currently mandated language on several forms regarding surrendering firearms and ammunition to specifically include magazines. This new language must be included in the emergency GVRO (new Pen. Code, § 18135), the temporary GVRO (new Pen. Code, § 18160), and the gun violence restraining order after hearing (new Pen. Code, § 18180). The forms that were revised as a result of these changes are the following:

- *Petition for Gun Violence Restraining Order* (form GV-100)³ (item 6),
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO)⁴ (items: What do I have to prove to get the order? And How can I convince the judge?),
- *Temporary Gun Violence Restraining Order* (form GV-110) (items 4, 5, Warnings and Notices to the Respondent, After You Have Been Served with a Temporary Order, and Instructions for Law Enforcement),
- *Gun Violence Restraining Order After Hearing* (form GV-130) (items 5, 6, Warnings and Notices to the Respondent, and Instructions for Law Enforcement),
- *Order on Request to Renew Gun Violence Restraining Order* (form GV-730) (items 4a. and 4c.), and
- *Gun Violence Emergency Protective Order* (form EPO-002) (items 2, 4, 5, Warnings and Information to the Restrained Person, and To Law Enforcement).

Elimination of filing fees

Section 18121 was added to the Penal Code to provide that there are no filing fees for an application, a responsive pleading, an order to show cause, or a subpoena filed in connection with the application for a gun violence restraining order. The forms that were revised to reflect this change are the following:

- *Petition for Gun Violence Restraining Order* (form GV-100) (item 8),
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO) (item: Will I have to pay a filing fee to request the order?), and
- *How Can I Respond to a Petition for Gun Violence Restraining Order?* (form GV-120-INFO) (item: Will I have to pay a filing fee?).

New instruction to law enforcement

Sections 18135 and 18160 of the Penal Code were amended by SB 1200 to add a requirement that, when serving a temporary or gun violence restraining order after hearing, the law enforcement officer shall “verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.” This requirement was added to the instructions to law enforcement on the GVRO order forms. The forms on which the instructions were revised as a result of these amendments are the following:

³ The numbering of this form, starting with item number 4, has been corrected.

⁴ While revising this form to reflect the statutory changes, a reference to the Domestic Violence Prevention Act in the question, “Will the order protect me in other ways, such as keeping the person from coming near me?” has also been corrected.

- *Temporary Gun Violence Restraining Order* (form GV-110), (on page 4),
- *Gun Violence Restraining Order After Hearing* (form GV-130) (on page 4), and
- *Gun Violence Emergency Protective Order* (form EPO-002) (on page 2).

Information about new hearing requirement for Emergency Protective Orders

New Penal Code section 18148 requires the court that issues the order or another court in the same jurisdiction to hold a hearing within 21 days after the date on the order to determine if a gun violence restraining order should be issued after notice and hearing. The *Gun Violence Emergency Protective Order* (form EPO-002) was revised on page 2 to provide information to the restrained party that such a hearing will be held, at which the court might extend the GVRO.

Free service of process by the sheriff

Section 6103.2 of the Government Code was amended by SB 1200 to provide that parties do not need to pay the sheriff for service of a GVRO; such service is added to the types of service for which sheriffs are to be reimbursed by the court. This information was added to the information sheet and petitions for the parties. The following forms were revised to reflect this statutory change:

- *Petition for Gun Violence Restraining Order* (form GV-100) (item 8),
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO) (item: How will the person to be restrained know about the order?),
- *Temporary Gun Violence Restraining Order* (form GV-110) (item 5),
- *Notice of New Hearing Date* (form GV-116) (item 6),
- *Gun Violence Restraining Order After Hearing* (form GV-130) (item 6),
- *What Is "Proof of Personal Service"?* (form GV-200-INFO) (item: Who can serve?).

Alternatives considered

Because the forms would have been incorrect under the new laws if not revised, the only alternative considered was when to recommend approval of the proposed revisions. The Civil and Small Claims Advisory Committee concluded it was better to amend the forms without prior circulation for comment, rather than have incorrect forms in use for the next several months.

Fiscal and Operational Impacts

While the new hearings will have fiscal and operational impacts on the court, they are mandated by statute and so not something that can be eliminated by the council. There will need to be training for clerks, judicial officers, and court legal services and self-help offices on the new statutory requirements, and how these new and revised forms reflect those changes. New training materials and internal procedures will need to be developed.

Attachments and Links

1. Proposed forms EPO-002, GV-100-INFO, GV-100, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO, pages 7-56.
2. Link for SB 1200
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1200.](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1200)

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

1. **RESTRAINED PERSON** (insert name of subject): _____
Sex: M F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

2. **TO THE RESTRAINED PERSON** (Also see important Warnings and Information on Page 2): **YOU MUST NOT** own, possess, purchase, receive, or attempt to purchase or receive any firearms, ammunition, **or magazines (any ammunition feeding devices)**. If you have any firearms, ammunition, **or magazines**, you **MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST**. If no request has been made, you must surrender any firearms, ammunition, **or magazines** in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer **within 24 hours** of being served with this order. You must **file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours**, or if the court is closed, then on the next business day after the firearms, ammunition, **or magazines** are surrendered or sold. **FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**
(Name and address of court): _____

3. **THIS ORDER WILL EXPIRE ON:** _____ **TIME** _____
INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. Reasonable grounds for the issuance of this Order exist, and a **Gun Violence** Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, **or magazines**; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

5. **To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.**

Judicial officer (name): _____ granted this Order on (date): _____ at (time): _____

APPLICATION

6. Officer has a reasonable cause to believe that the grounds set forth in item 4, above, exist (state supporting facts and dates; specify weapons—number, type and location):

7. Firearms were observed reported searched for seized.
 Ammunition (including magazines) was **observed** **reported** **searched for** **seized.**

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

By: _____ (PRINT NAME OF LAW ENFORCEMENT OFFICER)  _____ (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____


PROOF OF SERVICE

8. Person served (name): _____
9. I personally delivered copies of this Order to the person served as follows: Date: _____ Time: _____
Address: _____

10. At the time of service, I was at least 18 years of age. I am a California law enforcement officer.

11. My name, address, and telephone number are (this does not have to be server's home telephone number or address): _____

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

Date: _____ (TYPE OR PRINT NAME OF SERVER)  _____ (SIGNATURE OF SERVER)

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this Order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for this purpose.

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer term order should be issued.

A law enforcement officer or agency or a family member may seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the State of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A la persona restringida: Tiene prohibido ser dueño de un arma de fuego, municiones o cargadores, poseer, comprar o tratar de comprar, recibir o tratar de recibir u obtener un arma de fuego, municiones o cargadores de alguna otra manera. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de \$1000 y encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego, municiones y cargadores a una agencia del orden público o venderlos a, o almacenarlos con, un comerciante de armas autorizado hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Dentro de las 48 horas de recibir esta orden, se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado. Se puede usar el formulario GV-800, *Prueba de entrega, venta o almacenamiento de armas de fuego*, por este propósito.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 al otro lado. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo.

Un agente o agencia del orden público o un familiar puede solicitar una orden de restricción más permanente de la corte. Si está en violación de este orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o intentar comprar o recibir un arma de fuego, municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego más permanente. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable after issuance. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this Temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

Read *Can a Gun Violence Restraining Order Help Me?* (form GV-100-INFO) before completing this form.

Clerk stamps date here when form is filed.

DRAFT

10-15-18

**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:

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____ Age: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Venue

Why are you filing in this county? (Check all that apply):

a. The Respondent lives in this county.

b. Other (specify): _____

4 Other Court Cases

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

Yes No *If yes, on the next page, check each kind of case and give as much information as you know as to where and when each was filed:*

This is not a Court Order.



4 a.	Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(1)	<input type="checkbox"/> Civil Harassment	_____	_____	_____
(2)	<input type="checkbox"/> Domestic Violence	_____	_____	_____
(3)	<input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(4)	<input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(5)	<input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(6)	<input type="checkbox"/> Eviction	_____	_____	_____
(7)	<input type="checkbox"/> Workplace Violence	_____	_____	_____
(8)	<input type="checkbox"/> Criminal	_____	_____	_____
(9)	<input type="checkbox"/> Other (specify): _____	_____	_____	_____

b. Are there now any protective or restraining orders in effect relating to Respondent?
 Yes No I don't know *If yes, attach a copy if you have one.*

5 Description of Respondent's Firearms, Ammunition, or Magazines

If you have reason to believe that the respondent is in possession of firearms, ammunition, or magazines, answer (a) or check (b).

a. I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms, ammunition or magazines. (Describe the number, types, and locations of any firearms, ammunition, or magazines that you believe that the Respondent currently possesses or controls):

b. I am informed, and on that basis believe, that Respondent currently possesses or controls firearms, ammunition, or magazines, but I have no further specific information as to the number, types, and locations of those firearms, ammunition, or magazines.

6 Grounds for Issuance of a Gun Violence Restraining Order

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or a magazine.

This is not a Court Order.



10 **Temporary Restraining Order**

I request that a Temporary **Gun Violence** Restraining Order (TRO) be issued against the Respondent to last until the hearing. I am presenting form GV-110, *Temporary Restraining Order*, for the court's signature together with this Petition.

Has the Respondent been told that you were going to court to seek a TRO against him/her?

Yes No (If you answered no, explain why below):

Reasons stated in Attachment 9.

11 **Request to Give Less Than Five Days' Notice of Hearing**

You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (Form GV-200-INFO explains What Is "Proof of Personal Service"? Form GV-200, Proof of Personal Service, may be used to show the court that the papers have been served.)

If you want there to be fewer than five days between service and the hearing, explain why below:

Reasons stated in Attachment 10.

12 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

Lawyer's signature

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

Date: _____

Type or print your name

Sign your name

This is not a Court Order.

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer or a self-help center.

What is a **gun violence** restraining order?

It is a court order that prohibits someone from having any guns, ammunition, or magazines (ammunition feeding devices). The person must surrender all guns, ammunition, and magazines that he or she currently owns.

Can I get a **gun violence** restraining order against someone?

You can ask for one against a person who is an immediate family member. Immediate family members include:

- (1) your spouse or domestic partner;
- (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent;
- (3) your spouse's parents, children (your stepchildren), siblings, grandparents, and grandchildren; and
- (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

If you do not have the necessary relationship, advise a law enforcement officer of the situation. The officer may investigate and file the petition if he or she finds that the grounds exist.

Will the order protect me in other ways, such as keeping the person from coming near me?

No, the only order the court can make is to force the person to not have firearms, ammunition, or magazines. If you need personal protection from a family member, you should proceed under the Domestic Violence **Prevention** Act. See Form DV-500-INFO, *Can a Domestic Violence Restraining Order Help Me?*, for information on how to proceed.

Will I have to pay a filing fee to request the order?

No.

What forms do I need to get the order?

You must fill out all of Form GV-100, *Petition for **Gun Violence** Restraining Order*, and Form CLETS-001, *Confidential CLETS Information*. You must also fill out items 1 and 2 on Form GV-109, *Notice of Court Hearing*, and items 1 and 2 on Form GV-110, *Temporary **Gun Violence** Restraining Order*.

Where can I get these forms?

You can get the forms from legal publishers or on the Internet at www.courts.ca.gov. You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must go to the superior court in the county where the person to be restrained lives. At the court, ask where you should file your request for a gun violence restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.) Give your forms to the clerk of the court. The clerk will give you a hearing date on the *Notice of Court Hearing* form.

How soon can I get the order?

You can ask for a *Temporary **Gun Violence** Restraining Order*, which will be effective right away if granted. The court may decide whether or not to grant the temporary order based only on the facts that you have stated in your petition. If so, the court will decide within 24 hours whether or not to make the temporary order. Sometimes the court will want to examine you personally under oath. The clerk will tell you whether you should wait to talk to the judge or come back later to find out if the court has signed a temporary order.

If you don't ask for a temporary restraining order, you will have to wait until the hearing, at which the court will decide whether to make an order that will last for one year.

How will the person to be restrained know about the order?

If the court issues a temporary restraining order, someone age 18 or older—**not you**—must personally “serve” (give) the person to be restrained a copy of the order. The server must then fill out Form GV-200, *Proof of Personal Service*, and give it to you to file with the court. If the person to be restrained attends the hearing, no further proof of service is required. But if he or she does not attend the hearing, then any order issued at the hearing must also be personally served. For help with service, ask the court clerk for Form GV-200-INFO, *What Is “Proof of Personal Service?”* **Note: A sheriff or marshal can serve the order at no cost to you.**



What do I have to prove to get the order?

You will have to convince the judge that the person to be restrained poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines.

You will also have to convince the judge that a gun violence restraining order is needed to prevent personal injury to the person to be restrained or to another person because less restrictive alternatives either have been tried and haven't worked, or are inadequate or inappropriate for the current circumstances.

How can I convince the judge?

You will need to give the judge specific information. You should tell the judge everything that you know about the firearms, ammunition or magazines that the person to be restrained currently owns, including how many the person owns, the types, and where they are kept.

Then you will need to present facts to show that the person to be restrained is dangerous. This could be information about any threat of violence that the person to be restrained has made, any violent incident in which the person has been involved, or any crime of violence the person has committed. It could also be evidence that the person to be restrained has violated a protective order or abuses controlled substances or alcohol. It could also be evidence of the unlawful and reckless use, display, or brandishing of a firearm or the recent acquisition of a firearm. Or it could be evidence that the person to be restrained has been identified by a mental health provider as someone prohibited from purchasing, possessing or controlling any firearms.

You should include all of this information in your Petition and also be prepared to present it to the judge at the hearing.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you.

Will I see the restrained person at the court hearing?

If the person comes to the hearing, yes. If you are afraid, tell the court officer.

Can I bring someone with me to court?

Yes. You can bring someone to sit with you during the hearing, but that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

Do I need to bring a witness to the hearing?

Witnesses are not required, but it helps to have more proof than just your word. For example, consider bringing:

- Witnesses
- Written statements from witnesses made under oath
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, e-mails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use Form MC-030, *Declaration*, for this purpose.)

GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by (name of law enforcement agency): _____

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

c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

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 Respondent
 Full Name: _____

3 Hearing
The court will complete the rest of this form.
 Name and address of court if different from above: _____
 Hearing Date: _____ Time: _____
 Dept.: _____ Room: _____

4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)
 a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, is (check only one box below):
 (1) GRANTED until the court hearing.
 (2) DENIED until the court hearing. (Specify reasons for denial in b, below.)

Judicial Council of California, www.courts.ca.gov
 Rev. January 1, 2019, Mandatory Form
 Penal Code, § 11101 et seq.
 Approved by DOJ

Notice of Court Hearing (Gun Violence Prevention)

GV-109, Page 1 of 3



Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court makes a temporary order, it will last until your hearing date, which must be within 21 days of the date of the temporary order. If at the hearing the court issues a more permanent order, it will last for one year. It may be renewed for additional one-year periods.

What if the restrained person does not obey the order?

Call the police. The restrained person can be arrested and charged with a crime.

Can I agree with the restrained person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. The restrained person would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court's clerk or [self-help center](#) if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the 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.)

For help in your area, contact:

[Local information may be inserted.]

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
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:

1 Petitioner

a. Your Full Name:

- I am: A family member of the Respondent
- A law enforcement officer employed by
(name of law enforcement agency):

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____

3 Hearing

The court will complete the rest of this form.

Name and address of court if different from above:

Hearing Date	→ Date: _____	Time: _____	_____
	Dept.: _____	Room: _____	_____

4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)

a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, Petition for Gun Violence Restraining Order, is (check only one box below):

- (1) **GRANTED** until the court hearing.
- (2) **DENIED** until the court hearing. (Specify reasons for denial in b, below.)



b. Reasons for denial of a Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, are:

- (1) The facts as stated in Form GV-100 do not show that there is a substantial likelihood that both of the following are true:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines.

A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

- (2) Other (as set forth): Below On Attachment 4b(2)

5 Service of Documents on Respondent

At least five _____ calendar days before the hearing, a law enforcement officer or someone age 18 or older—and not a party to the action—must personally give (serve) a court file-stamped copy of this Form GV-109 to the Respondent, along with a copy of all the forms indicated below:

- a. GV-100, *Petition for Gun Violence Restraining Order* (file-stamped)
- b. GV-110, *Temporary Gun Violence Restraining Order* (file-stamped) **IF GRANTED**
- c. GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)
- d. GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*
- e. GV-250, *Proof of Service by Mail* (blank form)
- f. Other (specify): _____

Date: _____

Judicial Officer

To the Petitioner in 1 :

- The court cannot make an order at the court hearing unless the Respondent has been personally given (served) a copy of the Petition and a temporary order if issued. To show that the Respondent has been served, the person who served the forms must fill out a proof of service form. Form GV-200, *Proof of Personal Service*, may be used.
- For information about service, read Form GV-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the Respondent in time, you may ask for a later hearing date, which will give you more time to serve the documents. Use Form GV-115, *Request to Continue Court Hearing for Gun Violence Restraining Order*.



To the Respondent:

- If you want to respond to the *Petition for Gun Violence Restraining Order* in writing, file Form GV-120, *Response to Petition for Gun Violence Restraining Order* and have someone age 18 or older—**not you**—mail it to the Petitioner.
- The person who mailed the form must fill out a proof of service form. Form GV-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 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 order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may order you to turn in to law enforcement, or sell to or store with, a licensed gun dealer, any firearms, ammunition, or magazines that you own or possess. If issued, the order will last for one year.

**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

Clerk stamps date here when form is filed.

DRAFT

10-24-18

**Not approved by
the Judicial Council**

Petitioner 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 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____
Firm Name: _____

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

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

② Respondent

Full Name: _____
Description: _____

Sex: M F Height: _____ Weight: _____ Date of Birth: _____
Hair Color: _____ Eye Color: _____ Age: _____ Race: _____
Home Address (if known): _____
City: _____ State: _____ Zip: _____
Relationship to Petitioner: _____

The court will complete the rest of this form.

③ Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ a.m. p.m.

This is a Court Order.



6 Order Prohibiting All Firearms, Ammunition, and Magazines

- a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm or ammunition, including magazines (ammunition feeding devices).
- b. The court has received credible information that you own or possess one or more firearms, ammunition, or one or more magazines that have not been surrendered or sold. You must:
- (1) Surrender all firearms and ammunition, including magazines, in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms and ammunition, including magazines, to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must surrender all of your firearms and ammunition, including magazines, within 24 hours of being served with this Order. You may do so by:
 - (1) surrendering all of your firearms and ammunition, including magazines, in a safe manner to the local law enforcement agency; or
 - (2) selling all of your firearms and ammunition, including magazines, to a licensed gun dealer; or
 - (3) storing all of your firearms and ammunition, including magazines, with a licensed gun dealer for as long as this Order or any more permanent order granted at the hearing in item ③ is in effect.
 - (2) Within 48 hours of receiving this Order, file a receipt with the court that proves that your firearms and ammunition have been turned in, sold, or stored. (*You may use Form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.*) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

7 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this order is in effect. A hearing will be held on the date and at the time noted on Page 1 to determine if a more permanent gun violence restraining order should be issued. Failure to appear at the hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with the Order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the Order.

Violation of this Order is a misdemeanor. If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be changed only by an order of the court.

This is a Court Order.



After You Have Been Served With a Temporary Order

- Obey the order by turning in all firearms, ammunition, and magazines to a law enforcement agency or selling them to or storing them with a licensed gun dealer.
- Read Form GV-120-INFO, *How Can I Respond to a Petition for Gun Violence Restraining Order?*, to learn how to respond to this Order.
- If you want to respond, fill out Form GV-120, *Response to Petition for Gun Violence Restraining Order*, and file it with the court clerk.
- You must have Form GV-120 served by mail on the Petitioner or the Petitioner's attorney. You cannot do this yourself. The person who does the mailing should complete and sign Form GV-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make a gun violence restraining order against you that lasts for one year. Tell the judge why you disagree with the order requested.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Respondent must do the following:

- Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control.
- Order the Respondent to immediately surrender all firearms, ammunition, and magazines to him or her.
- Issue a receipt to the Respondent for all firearms, ammunition, or magazines that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms, Ammunition, or Magazines

The law enforcement agency that has received surrendered firearms, ammunition, or magazines must do the following:

- Retain the firearms, ammunition, or magazines until the termination or expiration of this Order or of any other gun violence restraining order issued by the court.
- On the expiration of this Order or of any later gun violence restraining order issued by the court, return the firearms, ammunition, or magazines to the respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms, ammunition, or magazines that are not claimed are subject to the requirements of section 34000.

This is a Court Order.



Instructions for Law Enforcement
(continued)

- If someone other than the Respondent claims title to any of the firearms, ammunition, or magazines surrendered, determine whether that person is the lawful owner. If so, return the firearms, ammunition, or magazines to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent “served” (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The Respondent was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the Respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it (see above: *Duties of Officer Serving This Order*).

The provisions in this *Temporary Gun Violence Restraining Order* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

1 Party Seeking Continuance

a. Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Other Party

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Request to Continue Hearing

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

a. A Temporary **Gun Violence** Restraining Order (Form GV-110) was issued on (date): _____
Please attach a copy of the order.


b. I request that the hearing be continued because (check one or both):
(1) The Respondent could not be served before the hearing date.
(2) Other reasons as stated: below on Attachment 3b(2)

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

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

Date: _____

Type or print your name

 _____
Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-09-18
Not approved by
the Judicial Council**

Party seeking continuance complete items ①, ②, and ③ a.

① Party Seeking Continuance

a. Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Other Party

Full Name: _____

③ New Hearing Date

a. A hearing in this case is currently set for (date): _____ at (time): _____

b. The court orders a new hearing date:

(1) at the request of the Petitioner (2) at the request of the Respondent (3) in its discretion

c. Because:

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

(2) the parties have agreed to postpone the hearing and ask for a new hearing date.

(3) for the reasons stated below on Attachment 3c

④ Order for Continuance and Notice of Hearing

The court hearing on the *Petition for **Gun Violence** Restraining Order (Form GV-100)* is continued and rescheduled:

Name and address of court if different from above:

**Hearing
Date**

→ Date: _____ Time: _____

Dept.: _____ Room: _____



5 Extension of Temporary Restraining Order

- a. No Temporary Restraining Order was issued in this case.
- b. The Temporary Restraining Order (TRO; form GV-110) issued on *(date)*: _____ is extended until the new hearing date.

6 No Fee to Serve

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

Warning and Notice to the Respondent:

If a *Temporary Gun Violence Restraining Order (Form GV-110)* was issued, it remains in full force and effect until the new hearing date. You must continue to obey it until the end of the hearing.

7 Service of Order

A copy of this Order must be served by the requesting party on the other party at least _____ days before the hearing unless both parties were in court at the time the continuance was granted.

A copy of form GV-100, *Petition for Gun Violence Restraining Order*, and form GV-110, *Temporary Gun Violence Restraining Order*, must also be served on the Respondent if he or she was not previously served. A proof of service should be filed with the court before the original hearing date.

Date: _____

Judicial Officer



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk’s office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Notice of New Hearing Date* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
Not approved by
the Judicial Council**

Use this form to respond to the Petition (form GV-100)

- Read *How Can I Respond to a Petition for a Gun Violence Restraining Order?* (form GV-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to his or her lawyer. (Use form GV-250, Proof of Service by Mail.)

1 Petitioner

Name of person seeking order (see form GV-100, item 1):

Fill in court name and street address:

Superior Court of California, County of

2 Respondent

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

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

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

See Petition for case number and fill in:

Case Number:

3 Gun Violence Restraining Order

- I do not agree to the order requested in the Petition because:
- Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from form GV-109 item 3 here:

Hearing Date → Date: _____ Time: _____
 Dept.: _____ Room: _____

If a Temporary Gun Violence Restraining Order was issued, you must obey it until the hearing. At the hearing, the court may make an order against you for one year.

4 Denial

I did not do anything described in item 5 of form GV-100.



5 **Justification or Excuse**

If I did some or all of the things that the Petitioner has accused me of, my actions were justified or excused for the following reasons (*explain*):

Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5-Justification or Excuse" as a title. You may use form MC-025, Attachment.

6 **Surrender of Guns, Ammunition, and Magazines**

If a Temporary Gun Violence Restraining Order (form GV-110) was issued, you cannot own or possess any guns, other firearms, ammunition, or magazines. (See item 6 of form GV-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns, other firearms, ammunition, or magazines in your immediate possession or control within 24 hours of being served with form GV-110. You must file a receipt with the court. You may use form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.

- a. I do not own or control any guns, other firearms, ammunition, or magazines.
b. I have turned in my guns, other firearms, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
 is attached. has already been filed with the court.

7 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

Lawyer's signature

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

Date: _____

Type or print your name

Sign your name

What is a gun violence restraining order?

It is a court order that prohibits someone from having any guns, ammunition, or magazines (any ammunition feeding device). The person must surrender all guns, ammunition, and magazines that he or she currently owns.

Who can ask for a gun violence restraining order?

The petition must have been filed by a law enforcement officer or an immediate family member of yours. Immediate family members include (1) your spouse or domestic partner; (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent; (3) your spouse’s parents, children (your stepchildren), siblings, grandparents, and grandchildren; and (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

I've been served with a Petition for Gun Violence Restraining Order. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* tells you when to appear in court. There may also be a *Temporary Gun Violence Restraining Order* prohibiting you from having any guns, ammunition, or magazines and requiring you to surrender, sell, or store any guns, ammunition, or magazines that you currently own or possess. You must obey the order until the hearing.

What if I don't obey the temporary order?

The police can arrest you. You can go to jail and pay a fine.

What if I don't agree with what the order says?

If you disagree with the order that the Petitioner is asking for, fill out Form GV-120, *Response to Petition for Gun Violence Restraining Order*, before your hearing date and file it with the court. You can get the form from legal publishers or on the Internet at www.courts.ca.gov. You also may be able to find it at your local courthouse or county law library.

Will I have to pay a filing fee?

No.

Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—not you—mail a copy of completed Form GV-120 to the person who asked for the order (or that person’s lawyer). (This is called “service by mail.”)

The person who serves the form by mail must fill out Form GV-250, *Proof of Service by Mail*. Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on Form GV-109, *Notice of Court Hearing*. If you do not go to the hearing, the judge can extend the order against you for up to one year without hearing from you.

GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by _____
(name of law enforcement agency)

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

c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

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 Respondent

Full Name: _____

3 Hearing

The court will complete the rest of this form.

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

4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)

a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, is (check only one box below):

(1) GRANTED until the court hearing.
 (2) DENIED until the court hearing. (Specify reasons for denial in b, below.)

Judicial Council of California, www.courts.ca.gov
 Rev. January 1, 2018. Mandatory Form
 Penal Code, § 18150 et seq.
 Approved by DOJ

**Notice of Court Hearing
 (Gun Violence Prevention)**

GV-109, Page 1 of 3



Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. It is probably best not to talk to him or her unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. (You can use Form MC-030, *Declaration*, for this purpose.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide whether to issue a gun violence restraining order that can last for one year.

Can I agree with the protected person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. You would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court clerk or [self-help center](#) if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court 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.)

For help in your area, contact:

[Local information may be inserted.]

Clerk stamps date here when form is filed.

**DRAFT
10-15-18
Not approved by
the Judicial Council**

Petitioner must complete items ① and ② only.

① Petitioner

a. Your Full Name:

- I am: A family member of the Respondent
- A law enforcement officer employed by
(name of law enforcement agency):

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

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 Respondent

Full Name: _____

Description:

Sex: M F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to Petitioner: _____

The court will complete the rest of this form.

③ Expiration Date

This Order expires at:

(Time): _____ a.m. p.m. midnight on (Date): _____

If no expiration date is written here, this Order expires one year from the date of issuance.

This is a Court Order.



7 Order Prohibiting All Firearms, Ammunition, and Magazines

- a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine (any ammunition feeding device).
- b. You must:
- (1) Surrender all firearms, ammunition, and magazines in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms, ammunition, and magazines to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must dispose of all of your firearms, ammunition, and magazines within 24 hours of receiving notice of this order. You may do so by either: (1) surrendering all of your firearms, ammunition, and magazines in a safe manner to the local law enforcement agency; or (2) selling all of your firearms, ammunition, and magazines to a licensed gun dealer; or (3) storing all of your firearms, ammunition, and magazines with a licensed gun dealer for as long as this Order is in effect.
 - (2) Within 48 hours of receiving this Order, or if the court is closed, then on the next business day, file a receipt with the court that proves that all of your guns or firearms, ammunition, and magazines have been turned in, sold, or stored. (*You may use Form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.*) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

8 Service of Order on Respondent

- a. The Respondent personally attended the hearing. No other proof of service is needed. The clerk has provided the Respondent with a blank copy of Form GV-600, *Request to Terminate Gun Violence Restraining Order*.
- b. The Respondent did not attend the hearing. The Respondent must be personally served with a court file-stamped copy of this Order and a blank copy of Form GV-600, *Request to Terminate Gun Violence Restraining Order*, by a law enforcement officer or someone age 18 or older - **and not a party to the action.**

9 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this Order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

This is a Court Order.

Violation of this Order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.) If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any firearm, ammunition, or magazines for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be terminated only by an order of the court.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this Order on the Respondent must do the following:

- Ask the restrained person if he or she has any firearm, ammunition, or magazines in his or her possession or under his or her custody or control.
- Order the Respondent to immediately surrender all firearms, ammunition, and magazines to him or her.
- Issue a receipt to the Respondent for all firearms, ammunition, and magazines that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms and Ammunition

The law enforcement agency that has received surrendered firearms, ammunition, or magazines must do the following:

- Retain the firearms, ammunition, or magazines until the expiration of this order or of any other gun violence restraining order issued by the court.
- On the expiration of this order or of any later gun violence restraining Order issued by the court, return the firearms and ammunition to the Respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms, ammunition, or magazines that are not claimed are subject to the requirements of section 34000.
- If someone other than the Respondent claims title to any of the firearms, ammunition, or magazines surrendered, determine whether that person is the lawful owner. If so, return the firearms, ammunition, and magazines to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The respondent was informed of the Order by an officer.
- Item 8a is checked.

This is a Court Order.



Instructions for Law Enforcement

(continued)

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it (*see above: Duties of Officer Serving This Order*).

The provisions in this *Gun Violence Restraining Order After Hearing* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Gun Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
Not approved by
the Judicial Council**

1 Petitioner

Name: _____

2 Respondent

Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be the Petitioner unless the Petitioner is a law enforcement officer.
- Give a copy of all documents checked in **4** to the Respondent. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the Petitioner.



Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

PROOF OF PERSONAL SERVICE

4 I personally gave the Respondent a copy of the forms checked below:

- a. GV-100, *Petition for **Gun Violence** Restraining Order*
- b. GV-109, *Notice of Court Hearing*
- c. GV-110, *Temporary **Gun Violence** Restraining Order*
- d. GV-116, *Order for Continuance and Notice of New Hearing Date*
- e. GV-120, *Response to Petition for **Gun Violence** Restraining Order* (blank form)
- f. GV-120-INFO, *How Can I Respond to a Petition for a **Gun Violence** Restraining Order?*
- g. GV-130, ***Gun Violence** Restraining Order After Hearing*
- h. GV-600, *Request to Terminate **Gun Violence** Restraining Order* (blank form)
- i. GV-800, *Proof of Firearms Turned In, Sold, or Stored* (blank form)
- j. Other (specify): _____

5 I personally gave copies of the documents checked above to the Respondent:

- a. On (date): _____ b. At (time): _____ a.m. p.m.
- c. At this address: _____
City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____ _____
Type or print server's name Server to sign here

What is “service”?

Service is the act of giving your legal papers to the other party. There are many kinds of service—in person, by mail, and others. This form is about personal or “in-person” service. The *Petition for Gun Violence Restraining Order* (Form GV-100), the *Notice of Court Hearing* (Form GV-109), and the *Temporary Gun Violence Restraining Order* (Form GV-110) must be served “in person.” That means that someone must personally “serve” (give) a copy of the forms to the respondent (the person to be prohibited from having guns).

These forms cannot be served by mail; they must be given to the respondent personally.

Service lets the respondent know:

- Why you are asking for a **Gun Violence** Restraining Order;
- The hearing date;
- How to respond.

Why do I have to get the orders served?

- The police cannot arrest anyone for violating an order unless that person knows about the order.
- No hearing can be held to extend the order for a year unless the respondent was served and knows about the hearing.

Don't serve it by mail!



Who can serve?

Any law enforcement officer may serve the respondent, even if the petition was filed by a law enforcement officer. **It is recommended that you ask a law enforcement officer to serve the forms because of the potential for gun violence. A sheriff or marshal will serve the order at no cost to you.**

However, service may also be by any person who is at least 18 years old and not a party to the action. That means that if the petitioner is a family member rather than a law enforcement officer, that person may not serve the forms on the respondent. You may use a process server. A “registered process server” is a business that you pay to deliver court forms. Look for “Process Serving” in the Yellow Pages or on the Internet.

How to serve

Ask the server to:

- Make personal contact with the person to be served.
- Make sure it is the right person. Ask the person’s name.
- Give the person copies of all papers checked on Form GV-200, *Proof of Personal Service*.
- Fill out and sign the *Proof of Personal Service* form.
- Give the signed *Proof of Personal Service* to you.

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

- If the person won’t take the papers, just leave them near him or her.
- It doesn’t matter if the person tears them up. Service is still complete.

When do the orders have to be served?

It depends. To know the exact date, you have to look at two things on Form GV-109, *Notice of Court Hearing*:

First, look at the hearing date on page 1 of Form GV-109.

③ **Hearing**

Hearing Date → Date: _____
Dept.: _____

Next, look at the number of days in item ⑤ on page 2 of Form GV-109.

⑤ **Service of Documents on Respondent**

At least five _____ calendar days before the hearing.

Look at a calendar. Subtract the number of days in ⑤ from the hearing date. That is the final date to have the orders served. It is always OK to serve earlier than that date. If nothing is checked or written in ⑤, you must serve the orders at least five days before the hearing.

Who signs the *Proof of Personal Service*?

Only the person who serves the forms can sign Form GV-200, *Proof of Personal Service*. You do not sign it; the restrained person does not need to sign it.

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

If someone other than a law enforcement officer serves the papers, you should:

- Make several copies.
- File the original with the court before your hearing.
- Bring a copy of the completed *Proof of Personal Service* to your hearing.
- Always keep an extra copy of the restraining orders with you for your safety.

What happens if I can't get the orders served before the hearing date?

You will need to ask the court to “continue” (postpone and reschedule) the hearing until after you are able to have the respondent served. Fill out and file Form GV-115, *Request to Continue Court Hearing for Gun Violence Restraining Order*. If the court grants you a continuance, the *Temporary Gun Violence Restraining Order* (Form GV-110) will remain in effect until the new hearing date.

Clerk stamps date here when form is filed.

**DRAFT
10-04-08
Not approved by
the Judicial Council**

1 Petitioner

Full Name: _____

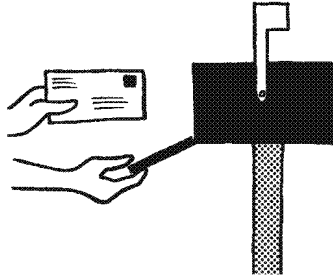
2 Respondent

Full Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Live or be employed in the county where the mailing took place.
- Not be a party to the case.
- Mail a copy of all documents checked in **4** to the person in **1**.
- Complete and sign this form and give it to the person in **2**.



Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

4 PROOF OF SERVICE BY MAIL

I am 18 years of age or older and not a party to this case. I live or am employed in the county where the mailing took place. I mailed the Petitioner Respondent a copy of all documents checked below:

- a. Form GV-120, *Response to Petition for Gun Violence Restraining Order*
- b. Other (specify): _____

5 I placed copies of the documents above in a sealed envelope and mailed them as described below:

- a. Mailed to (name): _____
- b. To this address: _____
City: _____ State: _____ Zip: _____
- c. On (date): _____ Mailed from City: _____ State: _____

6 Server's Information

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____

Type or print server's name

Server to sign here


- c. I have not previously requested that the court terminate the Order.
- The Order has been renewed. I have not previously requested that the court terminate the Order since it was renewed.

*(You may only request termination of a **gun violence** restraining order once during the initial period while the order is in effect and once during any period of renewal. If the court denies your request, you may not request termination again unless the order is renewed for another year.)*

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

Date: _____

Type or print your name

 _____
Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

Respondent completes items ① and ②.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

① Respondent

- a. Full Name: _____
- b. Your Lawyer (if you have one for this case):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

② Petitioner

- a. Full Name: _____
- b. Address (if known): _____
 City: _____ State: _____ Zip: _____

③ Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

**Hearing
Date** →

- Date: _____ Time: _____ Name and address of court if different from above: _____
- Dept.: _____ Room: _____ _____
- _____
- _____

To the Respondent:

④ Service

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Petitioner:

- GV-600, Request to Terminate **Gun Violence Restraining Order**;
- GV-610, Notice of Hearing on Request to Terminate **Gun Violence Restraining Order** (this form); and
- GV-620, Response to Request to Terminate **Gun Violence Restraining Order** (blank copy).

This is a Court Order.



- The forms must be personally served on the Petitioner _____ days before the hearing.
- The forms may be served by mail on the Petitioner or the Petitioner's attorney _____ days before the hearing.

The person who serves the forms must fill out either Form GV-200, *Proof of Personal Service*, or Form GV-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the completed proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see Form GV-200-INFO, *What is "Proof of Personal Service"?*.

Date: _____

Judicial Officer

To the Petitioner:

If you wish to make a written response to this request to terminate the current firearms restraining order, you may fill out Form GV-620, *Response to Request to Terminate Gun Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the other party at the address in ① at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail*, with the court before the hearing.

Request for Accommodations



Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Terminate Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
 [seal]

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

**Use this form to respond to the Request to Terminate Gun
Violence Restraining Order (Form GV-600).**

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Respondent at the address in (2) below. Use Form GV-250, *Proof of Service of Response by Mail*.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

1 Petitioner

a. Your Name: _____
 I am: A family member of the Respondent.
 A law enforcement officer employed by
 (name of law enforcement agency): _____

 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. Law enforcement officer, give agency information.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will consider your response at the hearing. Write your hearing date, time, and place from Form GV-610 item (3) here.

Hearing Date → Date: _____
 Time: _____
 Dept.: _____ Room: _____

2 Respondent

Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____

3 Response

- a. I do not oppose termination of the order.
- b. I oppose termination of the order for the following reasons (specify below):
- Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Terminate" for a title. You may use Form MC-025, Attachment.
- _____
- _____
- _____
- _____
- _____
- _____

Case Number:

Date: _____

Lawyer's name, if you have one



Lawyer's signature

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

Date: _____

Type or print your name



Sign your name

To the Petitioner:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-620 to the Respondent or to the Respondent's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service by Mail*. Have the person who did the mailing sign the original. Take the completed Proof of Service form back to the court clerk or bring it with you to the hearing.

Clerk stamps date here when form is filed.

DRAFT

10/15/18

Prevailing party completes items ① and ②. If the Order is granted, the Respondent is the prevailing party. If the Order is denied, the Petitioner is the prevailing party.

① Respondent

- a. Full Name: _____
- b. Your Lawyer (if you have one for this case):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Petitioner

- Full Name: _____
- Address (if known): _____
- City: _____ State: _____ Zip: _____

③ Hearing

There was a hearing on (date): _____ at time: _____ a.m. p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

- a. The Petitioner
- b. The Respondent
- c. The lawyer for the Petitioner (name): _____
- d. The lawyer for the Respondent (name): _____

④ Findings

The court finds that there is no longer clear and convincing evidence that:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines; and

This is a Court Order.



A **gun violence** restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

There remains clear and convincing evidence that grounds continue to exist to support the order.

5 Order on Request to Terminate

The request to terminate the **Gun Violence Restraining Order After Hearing** (Form GV-130), originally issued on (date): _____ and most recently renewed on (date): _____, is:

- a. **GRANTED.** The order is terminated as of (date of hearing) _____
- b. **DENIED.** The order and expiration date remain in effect.

To the Prevailing Party:

6 Service of Order

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented, you are required to serve the attorney instead of the party.

- Order Granted**—The Petitioner attended the hearing. **No further service is required.**
- Order Granted**—The Petitioner did not attend the hearing. **Service is required:** This Order:
 - Must be personally served on the Petitioner within _____ days of the date of this Order.
 - May be served by mail on the Petitioner within 5 days of the date of this Order.
- Order Denied**—If the Petitioner did not attend the hearing -- **Service by Mail:** The Petitioner may be served with this Order by mail.

Date: _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Order on Request to Terminate Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18**

**Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the **Gun Violence Restraining Order After Hearing** (Form GV-130) for an additional period of one year. A copy of the order is attached.

a. The order currently will end on *(date)*: _____
(If the order has already expired, you must file a new petition.)

b. This is my first request to renew the order.
 The order has been renewed _____ times.

c. I ask the court to renew the order because *(explain below)*:

Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Reasons to Renew Order" for a title. You may use Form MC-025, Attachment.

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

Date: _____

Type or print your name



Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-15-18**

**Not approved by
the Judicial Council**

Petitioner completes items ① and ② .

① Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency):

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. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Respondent

Full Name: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

③ Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect.

**Hearing
Date** →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

This is a Court Order.



To the Petitioner:

4 Service on Respondent

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Respondent

- GV-700, *Request to Renew Gun Violence Restraining Order*;
- GV-710, *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (this form);
- GV-720, *Response to Request to Renew Gun Violence Restraining Order* (blank copy);

- The forms must be personally served on the Respondent _____ days before the hearing.
- The forms may be served by mail on the Respondent or the Respondent's attorney _____ days before the hearing.

Date: _____

Judicial Officer

To the Respondent:

At the hearing, the judge can renew the current restraining order for another year. You *must* continue to obey the current restraining order. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* continue to obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out Form GV-720, *Response to Request to Renew Gun Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the Petitioner at the address in ① at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail*, with the court before the hearing or bring it with you to the 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 *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 Hearing on Request to Renew Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

Use this form to respond to the Request to Renew Gun Violence Restraining Order (Form GV-700).

- Fill out this form and then take it to the court clerk.
Have someone age 18 or older—not you—mail a copy of this form and any attached pages to the Petitioner at the address in 1 below. Then file Form GV-250, Proof of Service by Mail with the court.

Clerk stamps date here when form is filed.
DRAFT
10-04-18
Not approved by the Judicial Council

Fill in court name and street address:
Superior Court of California, County of

Fill in case number:
Case Number:

The court will consider your Response at the hearing. Write your hearing date, time, and place from Form GV-710 item 3 here.

Hearing Date Date: Time:
Dept.: Room:

You must continue to obey the current restraining order until the hearing. At the hearing, the court can extend the order against you for another year.

1 Petitioner (From Form GV-700, item 1)

Name:
Address:
City: State: Zip:

2 Respondent

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

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

3 Response

- I do not oppose renewal of the order.
I oppose renewal of the order for the following reasons (specify below):

Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Renew" for a title. You may use Form MC-025, Attachment.

Blank lines for providing reasons for opposing renewal.

Case Number: _____

Date: _____

Lawyer's name, if you have one

▶ _____
Lawyer's signature

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

Date: _____

Type or print your name

▶ _____
Sign your name

To the Respondent:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-720 to the Petitioner or to the Petitioner's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service of Response by Mail*. Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Clerk stamps date here when form is filed.

DRAFT

10.15.18

Prevailing party completes items ① and ②. If the Order is granted, the Petitioner is the prevailing party. If the Order is denied, the Respondent is the prevailing party.

① Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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 Respondent

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

③ Hearing

There was a hearing on (date): _____ at time: _____ a.m. p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

- a. The Petitioner
- b. The Respondent
- c. The lawyer for the Petitioner (name): _____
- d. The lawyer for the Respondent (name): _____

This is a Court Order.



4 Order on Request for Renewal

The request to renew the attached *Gun Violence Restraining Order After Hearing* (Form GV-130), originally issued on (date): _____, is:

- DENIED.** The attached order expires as stated in item ③ of the order.
- GRANTED.** The attached order is renewed for one year and will now expire:

on (date): _____ at (time): _____ a.m. p.m. or midnight

If no expiration date is written here, the order expires one year from the date of the hearing in item ③.

- a. The court finds by clear and convincing evidence that both of the following are true:
 - (1) Respondent continues to pose a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines.
 - (2) A gun violence restraining order remains necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.
- b. The facts as stated in the *Request to Renew Gun Violence Restraining Order* (Form GV-700) and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.

and/or for the reasons set forth below.

See the attached Form MC-025, *Attachment*

- c. **To the Respondent: If this order is renewed, it will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.**

This is a Court Order.



To the Prevailing Party:

5 Service of Order

Someone age 18 or older—**not you**—must serve a copy of this order on the other party.

- Order Granted**—The Respondent attended the hearing. **No further service is required.**
- Order Granted**—The Respondent did not attend the hearing. **Personal service is required.** The Respondent must be personally served with this Order. *(After the Respondent has been served, file Form GV-200, Proof of Personal Service with the court clerk. For help with service, read Form GV-200-INFO, What is "Proof of Personal Service"?.)*
- Order Denied—Service by Mail**—If the Petitioner did not attend the hearing, the Petitioner may be served with this Order by mail. *(After the Petitioner has been served, the person doing the mailing should fill out Form POS-030, Proof of Service by First-Class Mail—Civil. File the form with the court clerk. For help with service by mail, read the Information Sheet on page 2 of Form POS-030.)*

Date: _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Order on Request to Renew Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

This is a Court Order.

1 What is a firearm?

A firearm is a:

- Handgun • Rifle
- Shotgun • Assault weapon

If you own or have any firearms, ammunition, or magazines, you must:

- 2**
- If demanded, give them to the law enforcement officer when he or she serves you with the court order requiring surrender; otherwise, within 24 hours:
 - Turn them in to your local law enforcement agency; or
 - Sell them to a licensed firearms dealer.
 - Store them with a licensed firearms dealer.

**3 How do I sell or store my firearms?**

Find a California licensed firearms dealer in your area.

Look under “Firearms Dealers” in your local Yellow Pages or on the Internet. Make sure the dealer is licensed.

4 How do I surrender my firearms to law enforcement?

Call your local law enforcement agency to ask about their procedures. Take a copy of the court order with you. Go directly to the law enforcement agency. Do not go anywhere else with firearms in your vehicle!

5 If I turn my firearms in to law enforcement, how long will they keep them?

As long as any **gun violence** restraining order against you remains in effect.

6 After I give my firearms to law enforcement, can I change my mind?

Yes. You are allowed to sell them to a licensed gun dealer. To do this, the gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the firearms that you are selling.

7 Do I have to pay the law enforcement agency to keep my firearm?

You may have to pay the agency for keeping your firearms. Contact your local law enforcement agency and ask if a fee is charged. The agency will tell you how much you need to pay.

8 Do I have to prove that I have turned in, sold, or stored my firearms?

Yes. Within 48 hours you must file a receipt with the court and the law enforcement agency showing that you have surrendered your firearms to a law enforcement agency or sold them to or stored them with a licensed gun dealer. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for this purpose.

9 Questions?

Call your local law enforcement agency.

(Insert local information here.)

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement
Adopt forms GV-009, GV-020, GV-020-INFO, GV-025, GV-030; and revise forms EPO-002, GV-200, GV-800, GV-800-
INFO

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Kristi Morioka, 916-643-7056, kristi.morioka@jud.ca.gov

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

Approved by RUPRO: October 19, 2018

Project description from annual agenda: Senate Bill 1200 amends the statutes relating to gun violence restraining orders (GVRO) to, among other things, mandate the title of the forms to be used in relation to the orders; add ammunition and magazines to the items to be seized; provide that service by sheriffs shall be reimbursed; and eliminate any filing fees. Senate Bill 2888* amends the statutes to add two new categories of parties who may seek GVROs, coworkers and employees of a school that the person with the guns recently attended. The GVRO forms must be amended to reflect the changes in the statutes.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT W19-02

Title

Protective Orders: Gun Violence Restraining Order Forms (Approved by Council)

Rules, Forms, Standards, or Statutes Affected

Revise forms EPO-002, GV-100-INFO, GV-100, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Action Requested

Review and submit comments by February 12, 2019

Effective Date

January 1, 2019

Contact

Kristi Morioka
916-643-7056 phone
kristi.morioka@jud.ca.gov

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

Executive Summary

At the November 30, 2018 meeting, the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revising 22 of the gun violence restraining order (GVRO) forms to reflect recently enacted legislative amendments that go into effect January 1, 2019. Recently enacted Senate Bill 1200 (Stats. 2018, ch. 898) requires orders under Penal Code section 18100 et seq. to be referred to as gun violence restraining orders, expands the definition of ammunition to include a magazine, prohibits a filing fee for GVRO forms and documents, requires a law enforcement officer to make a specific request when serving a gun violence restraining order, and provides that parties do not need to pay the sheriff for service of a GVRO. The short time frame between the bill passage and implementation date necessitated that the forms be revised without time for public comment before they went into effect. The forms are now being circulated for comment, and the Civil and Small Claims Advisory Committee will recommend any appropriate revisions based on comments received.

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

Background

The Gun Violence Restraining Orders Act,¹ enacted in 2014 and operative January 1, 2016, provided a civil process to obtain a court order requiring a person who poses an imminent, significant danger of personal injury to himself, herself, or others to surrender—and prohibiting him or her from possessing—firearms and ammunition before the person uses a firearm to commit a crime. The Judicial Council adopted 23 new GVRO forms, effective January 1, 2016, to implement that act, and there have been minor revisions to the forms since that time to reflect later legislation.

Senate Bill 1200 amended the Gun Violence Restraining Orders Act in several ways, effective January 1, 2019. In order to ensure that the Judicial Council GVRO forms are in compliance with the law in January, the council approved revisions to almost all of the forms at its November 2018 meeting, effective January 1, 2019. The approved revisions are all minor and are expected to be noncontroversial. These revised forms are described in this invitation to comment.²The Proposal

The Judicial Council has revised the following forms, effective January 1, 2019:

- *Gun Violence Emergency Protective Order* (form EPO-002);
- *Petition for Gun Violence Restraining Order* (form GV-100);
- *Can a Gun Violence Restraining Order Help Me?* (form GV-100-INFO);
- *Notice of Court Hearing* (form GV-109);
- *Temporary Gun Violence Restraining Order* (form GV-110);
- *Request to Continue Court Hearing for Gun Violence Restraining Order* (form GV-115);
- *Order for Continuance and Notice of New Hearing Date* (form GV-116);
- *Response to Petition for Gun Violence Restraining Order* (form GV-120);
- *How Can I Respond to a Petition for a Gun Violence Restraining Order?* (form GV-120-INFO);
- *Gun Violence Restraining Order After Hearing* (form GV-130);
- *Proof of Personal Service* (form GV-200);
- *What Is “Proof of Personal Service”?* (form GV-200-INFO);
- *Proof of Service by Mail* (form GV-250);
- *Request to Terminate Gun Violence Restraining Order* (form GV-600);

¹ See Assem. Bill 1014 (Skinner; Stats. 2014, ch. 872), sometimes referred to as “the Skinner Bill.” (Pen. Code, § 18100 et seq.)

² Separately, the Civil and Small Claims Advisory Committee is proposing new and revised GVRO forms specifically to address the new hearing requirement that SB 1200 has added, to be held within 21 days of issuance of a GVRO. (Pen. Code, § 18148.) Those forms have not yet been approved by the council. They are being circulated separately for comments as ITC W19 -XXX.

- *Notice of Hearing on Request to Terminate Gun Violence Restraining Order* (form GV-610);
- *Response to Request to Terminate Gun Violence Restraining Order* (form GV-620);
- *Order on Request to Terminate Gun Violence Restraining Order* (form GV-630);
- *Request to Renew Gun Violence Restraining Order* (form GV-700);
- *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (form GV-710);
- *Response to Request to Renew Gun Violence Restraining Order* (form GV-720);
- *Order on Request to Renew Gun Violence Restraining Order* (form GV-730); and
- *How Do I Turn In, Sell, or Store My Firearms?* (form GV-800-INFO).

Change in form titles

Section 18105 of the Penal Code is amended by SB 1200 to require that all “forms, orders, and documents shall refer to any order issued pursuant to this chapter as a gun violence restraining order,” necessitating a name change for all of the forms that are currently titled “firearms” restraining order and revisions to the other GVRO forms where these forms are referenced by name. This change was applied to all of the GVRO forms the Judicial Council approved to be revised.

Expanded definition of ammunition

Section 18100 of the Penal Code is amended by SB 1200 to expand the definition of ammunition to include a magazine as defined in Penal Code section 16890, which is “any ammunition feeding device.” The statutory amendments also required expanding the currently mandated language on several forms regarding surrendering firearms and ammunition to specifically include magazines. This new language must be included in the emergency GVRO (new Pen. Code, § 18135), the temporary GVRO (new Pen. Code, § 18160), and the GVRO after hearing (new Pen. Code, § 18180). The following forms were revised as a result of these changes:

- *Petition for Gun Violence Restraining Order* (form GV-100³ (item 6);
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO⁴ (items: What do I have to prove to get the order? and How can I convince the judge?);
- *Temporary Gun Violence Restraining Order* (form GV-110 (items 4, 5, Warnings and Notices to the Respondent, After You Have Been Served With a Temporary Order, and Instructions for Law Enforcement);
- *Gun Violence Restraining Order After Hearing* (form GV-130 (items 5, 6, Warnings and Notices to the Respondent, and Instructions for Law Enforcement);

³ The numbering of items in this form, starting with item 4, has been corrected.

⁴ While revising this form to reflect the statutory changes, the reference to the Domestic Violence Prevention Act in the question, “Will the order protect me in other ways, such as keeping the person from coming near me?” has also been corrected.

- *Order on Request to Renew Gun Violence Restraining Order* (form GV-730 (items 4a and 4c); and
- *Gun Violence Emergency Protective Order* (form EPO-002 (items 2, 4, 5, and Warnings and Information: To the Restrained Person, To Law Enforcement)).

Elimination of filing fees

Section 18121 was added to the Penal Code to provide that there are no filing fees for an application, a responsive pleading, an order to show cause, or a subpoena filed in connection with the application for a gun violence restraining order. The following forms were revised to reflect this change:

- *Petition for Gun Violence Restraining Order* (form GV-100 (item 8));
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO (item: Will I have to pay a filing fee to request the order?)); and
- *How Can I Respond to a Petition for Gun Violence Restraining Order?* (form GV-120-INFO (item: Will I have to pay a filing fee?)).

New instruction to law enforcement

Sections 18135 and 18160 of the Penal Code were amended by SB 1200 to add a requirement that, when serving a temporary emergency or gun violence restraining order after hearing, the law enforcement officer shall “verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.” This requirement was added to the instructions to law enforcement on the GVRO order forms. The forms on which the instructions were revised as a result of these amendments are the following:

- *Temporary Gun Violence Restraining Order* (form GV-110 (page 4));
- *Gun Violence Restraining Order After Hearing* (form GV-130 (page 4); and
- *Gun Violence Emergency Protective Order* (form EPO-002 (page 2)).

Information about new hearing requirement for Emergency Protective Orders

New Penal Code section 18148 requires the court that issues the order or another court in the same jurisdiction to hold a hearing within 21 days after the date on the order to determine if a gun violence restraining order should be issued after notice and hearing. The *Gun Violence Emergency Protective Order* (form EPO-002) was revised on page 2 to provide information to the restrained party that such a hearing will be held, at which the court might extend the GVRO.

Free service of process by the Sheriff

Section 6103.2 of the Government Code was amended by SB 1200 to provide that parties do not need to pay the sheriff for service of a GVRO; such service is added to the types of service for which sheriffs are to be reimbursed by the court. This information was added to the information sheet and petitions for the parties. The following forms were revised to reflect this statutory change:

- *Petition for Gun Violence Restraining Order* (form GV-100 (item 8));
- *Petition for Gun Violence Restraining Order* (form GV-100-INFO (item: How will the person to be restrained know about the order?));
- *Temporary Gun Violence Restraining Order* (form GV-110 (item 5));
- *Notice of New Hearing Date* (form GV-116 (item 6));
- *Gun Violence Restraining Order After Hearing* (form GV-130 (item 6); and
- *What Is “Proof of Personal Service”?* (form GV-200-INFO (item: Who can serve?).

Alternatives considered

Because the forms would have been incorrect under the new laws if not revised, the only alternative considered was when to recommend approval of the proposed revisions. The Civil and Small Claims Advisory Committee concluded it was better to amend the forms without prior circulation for comment, rather than have incorrect forms in use for the next several months.

Fiscal and Operational Impacts

While the new required hearings will have fiscal and operational impacts on the court, they are mandated by statute and so are not something that can be eliminated by the council. There will need to be training for clerks, judicial officers, and court legal services and self-help offices on the new statutory requirements, and how these new and revised forms reflect those changes. New training materials and internal procedures will need to be developed.

Attachments and Links

1. Proposed Forms EPO-002, GV-100-INFO, GV-100, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO, at pages 6–55.
2. Senate Bill 1200
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1200

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

1. **RESTRAINED PERSON** (insert name of subject): _____
Sex: M F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

2. **TO THE RESTRAINED PERSON** (Also see important Warnings and Information on Page 2): **YOU MUST NOT** own, possess, purchase, receive, or attempt to purchase or receive any firearms, ammunition, **or magazines (any ammunition feeding devices)**. If you have any firearms, ammunition, **or magazines**, you **MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST**. If no request has been made, you must surrender any firearms, ammunition, **or magazines** in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer **within 24 hours** of being served with this order. You must **file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours**, or if the court is closed, then on the next business day after the firearms, ammunition, **or magazines** are surrendered or sold. **FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**
(Name and address of court): _____

3. **THIS ORDER WILL EXPIRE ON:** _____ **TIME** _____
INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. Reasonable grounds for the issuance of this Order exist, and a **Gun Violence** Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, **or magazines**; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.
5. **To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.**

Judicial officer (name): _____ granted this Order on (date): _____ at (time): _____

APPLICATION

6. Officer has a reasonable cause to believe that the grounds set forth in item 4, above, exist (state supporting facts and dates; specify weapons—number, type and location):

7. Firearms were observed reported searched for seized.
 Ammunition (including magazines) was **observed** **reported** **searched for** **seized.**

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

By: _____ (PRINT NAME OF LAW ENFORCEMENT OFFICER)  _____ (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____


PROOF OF SERVICE

8. Person served (name): _____
9. I personally delivered copies of this Order to the person served as follows: Date: _____ Time: _____
Address: _____

10. At the time of service, I was at least 18 years of age. I am a California law enforcement officer.

11. My name, address, and telephone number are (this does not have to be server's home telephone number or address): _____

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

Date: _____ (TYPE OR PRINT NAME OF SERVER)  _____ (SIGNATURE OF SERVER)

**GUN VIOLENCE EMERGENCY PROTECTIVE ORDER
WARNINGS AND INFORMATION**

EPO-002

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this Order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for this purpose.

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer term order should be issued.

A law enforcement officer or agency or a family member may seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the State of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A la persona restringida: Tiene prohibido ser dueño de un arma de fuego, municiones o cargadores, poseer, comprar o tratar de comprar, recibir o tratar de recibir u obtener un arma de fuego, municiones o cargadores de alguna otra manera. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de \$1000 y encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego, municiones y cargadores a una agencia del orden público o venderlos a, o almacenarlos con, un comerciante de armas autorizado hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Dentro de las 48 horas de recibir esta orden, se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado. Se puede usar el formulario GV-800, *Prueba de entrega, venta o almacenamiento de armas de fuego*, por este propósito.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 al otro lado. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo.

Un agente o agencia del orden público o un familiar puede solicitar una orden de restricción más permanente de la corte. Si está en violación de este orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o intentar comprar o recibir un arma de fuego, municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego más permanente. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable after issuance. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this Temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

Read *Can a Gun Violence Restraining Order Help Me?* (form GV-100-INFO) before completing this form.

Clerk stamps date here when form is filed.

DRAFT

10-15-18

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:

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____ Age: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Venue

Why are you filing in this county? (Check all that apply):

a. The Respondent lives in this county.

b. Other (specify): _____

4 Other Court Cases

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

Yes No *If yes, on the next page, check each kind of case and give as much information as you know as to where and when each was filed:*

This is not a Court Order.



4 a.	Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(1)	<input type="checkbox"/> Civil Harassment	_____	_____	_____
(2)	<input type="checkbox"/> Domestic Violence	_____	_____	_____
(3)	<input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(4)	<input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(5)	<input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(6)	<input type="checkbox"/> Eviction	_____	_____	_____
(7)	<input type="checkbox"/> Workplace Violence	_____	_____	_____
(8)	<input type="checkbox"/> Criminal	_____	_____	_____
(9)	<input type="checkbox"/> Other (specify): _____	_____	_____	_____

b. Are there now any protective or restraining orders in effect relating to Respondent?
 Yes No I don't know *If yes, attach a copy if you have one.*

5 Description of Respondent's Firearms, Ammunition, or Magazines

If you have reason to believe that the respondent is in possession of firearms, ammunition, or magazines, answer (a) or check (b).

a. I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms, ammunition or magazines. (Describe the number, types, and locations of any firearms, ammunition, or magazines that you believe that the Respondent currently possesses or controls):

b. I am informed, and on that basis believe, that Respondent currently possesses or controls firearms, ammunition, or magazines, but I have no further specific information as to the number, types, and locations of those firearms, ammunition, or magazines.

6 Grounds for Issuance of a Gun Violence Restraining Order

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or a magazine.

This is not a Court Order.



10 **Temporary Restraining Order**

I request that a Temporary **Gun Violence** Restraining Order (TRO) be issued against the Respondent to last until the hearing. I am presenting form GV-110, *Temporary Restraining Order*, for the court's signature together with this Petition.

Has the Respondent been told that you were going to court to seek a TRO against him/her?

Yes No (If you answered no, explain why below):

Reasons stated in Attachment 9.

11 **Request to Give Less Than Five Days' Notice of Hearing**

You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (Form GV-200-INFO explains What Is "Proof of Personal Service"? Form GV-200, Proof of Personal Service, may be used to show the court that the papers have been served.)

If you want there to be fewer than five days between service and the hearing, explain why below:

Reasons stated in Attachment 10.

12 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

Lawyer's signature

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

Date: _____

Type or print your name

Sign your name

This is not a Court Order.

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer or a self-help center.

What is a **gun violence** restraining order?

It is a court order that prohibits someone from having any **guns, ammunition, or magazines (ammunition feeding devices)**. The person must surrender **all guns, ammunition, and magazines** that he or she currently owns.

Can I get a **gun violence** restraining order against someone?

You can ask for one against a person who is an immediate family member. Immediate family members include:

- (1) your spouse or domestic partner;
- (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent;
- (3) your spouse's parents, children (your stepchildren), siblings, grandparents, and grandchildren; and
- (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

If you do not have the necessary relationship, advise a law enforcement officer of the situation. The officer may investigate and file the petition if he or she finds that the grounds exist.

Will the order protect me in other ways, such as keeping the person from coming near me?

No, the only order the court can make is to force the person to not have firearms, ammunition, or magazines. If you need personal protection from a family member, you should proceed under the Domestic Violence **Prevention** Act. See Form DV-500-INFO, *Can a Domestic Violence Restraining Order Help Me?*, for information on how to proceed.

Will I have to pay a filing fee to request the order?

No.

What forms do I need to get the order?

You must fill out all of Form GV-100, *Petition for **Gun Violence** Restraining Order*, and Form CLETS-001, *Confidential CLETS Information*. You must also fill out items 1 and 2 on Form GV-109, *Notice of Court Hearing*, and items 1 and 2 on Form GV-110, *Temporary **Gun Violence** Restraining Order*.

Where can I get these forms?

You can get the forms from legal publishers or on the Internet at www.courts.ca.gov. You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must go to the superior court in the county where the person to be restrained lives. At the court, ask where you should file your request for a gun violence restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.) Give your forms to the clerk of the court. The clerk will give you a hearing date on the *Notice of Court Hearing* form.

How soon can I get the order?

You can ask for a *Temporary **Gun Violence** Restraining Order*, which will be effective right away if granted. The court may decide whether or not to grant the temporary order based only on the facts that you have stated in your petition. If so, the court will decide within 24 hours whether or not to make the temporary order. Sometimes the court will want to examine you personally under oath. The clerk will tell you whether you should wait to talk to the judge or come back later to find out if the court has signed a temporary order.

If you don't ask for a temporary restraining order, you will have to wait until the hearing, at which the court will decide whether to make an order that will last for one year.

How will the person to be restrained know about the order?

If the court issues a temporary restraining order, someone age 18 or older—**not you**—must personally “serve” (give) the person to be restrained a copy of the order. The server must then fill out Form GV-200, *Proof of Personal Service*, and give it to you to file with the court. If the person to be restrained attends the hearing, no further proof of service is required. But if he or she does not attend the hearing, then any order issued at the hearing must also be personally served. For help with service, ask the court clerk for Form GV-200-INFO, *What Is “Proof of Personal Service?”* **Note: A sheriff or marshal can serve the order at no cost to you.**



What do I have to prove to get the order?

You will have to convince the judge that the person to be restrained poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines.

You will also have to convince the judge that a gun violence restraining order is needed to prevent personal injury to the person to be restrained or to another person because less restrictive alternatives either have been tried and haven't worked, or are inadequate or inappropriate for the current circumstances.

How can I convince the judge?

You will need to give the judge specific information. You should tell the judge everything that you know about the firearms, ammunition or magazines that the person to be restrained currently owns, including how many the person owns, the types, and where they are kept.

Then you will need to present facts to show that the person to be restrained is dangerous. This could be information about any threat of violence that the person to be restrained has made, any violent incident in which the person has been involved, or any crime of violence the person has committed. It could also be evidence that the person to be restrained has violated a protective order or abuses controlled substances or alcohol. It could also be evidence of the unlawful and reckless use, display, or brandishing of a firearm or the recent acquisition of a firearm. Or it could be evidence that the person to be restrained has been identified by a mental health provider as someone prohibited from purchasing, possessing or controlling any firearms.

You should include all of this information in your Petition and also be prepared to present it to the judge at the hearing.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you.

Will I see the restrained person at the court hearing?

If the person comes to the hearing, yes. If you are afraid, tell the court officer.

Can I bring someone with me to court?

Yes. You can bring someone to sit with you during the hearing, but that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

Do I need to bring a witness to the hearing?

Witnesses are not required, but it helps to have more proof than just your word. For example, consider bringing:

- Witnesses
- Written statements from witnesses made under oath
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, e-mails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use Form MC-030, *Declaration*, for this purpose.)

GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by (name of law enforcement agency): _____

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

c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

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 Respondent

Full Name: _____

3 Hearing

The court will complete the rest of this form.

Name and address of court if different from above: _____

Hearing Date: _____ Time: _____
 Dept.: _____ Room: _____

4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)

a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, is (check only one box below):

(1) GRANTED until the court hearing.
 (2) DENIED until the court hearing. (Specify reasons for denial in b, below.)

Judicial Council of California, www.courts.ca.gov
 Rev. January 1, 2019, Mandatory Form
 Penal Code, § 18100 et seq.
 Approved by DOJ

Notice of Court Hearing (Gun Violence Prevention)

GV-109, Page 1 of 3



Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court makes a temporary order, it will last until your hearing date, which must be within 21 days of the date of the temporary order. If at the hearing the court issues a more permanent order, it will last for one year. It may be renewed for additional one-year periods.

What if the restrained person does not obey the order?

Call the police. The restrained person can be arrested and charged with a crime.

Can I agree with the restrained person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. The restrained person would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court's clerk or [self-help center](#) if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the 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.)

For help in your area, contact:

[Local information may be inserted.]

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
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:

1 Petitioner

a. Your Full Name:

- I am: A family member of the Respondent
- A law enforcement officer employed by
(name of law enforcement agency):

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____

3 Hearing

The court will complete the rest of this form.

Name and address of court if different from above:

Hearing Date	→ Date: _____	Time: _____	_____
	Dept.: _____	Room: _____	_____

4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)

a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, is (check only one box below):

- (1) **GRANTED** until the court hearing.
- (2) **DENIED** until the court hearing. (Specify reasons for denial in b, below.)



b. Reasons for denial of a Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, are:

(1) The facts as stated in Form GV-100 do not show that there is a substantial likelihood that both of the following are true:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines.

A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

(2) Other (as set forth): Below On Attachment 4b(2)

5 Service of Documents on Respondent

At least five _____ calendar days before the hearing, a law enforcement officer or someone age 18 or older—and not a party to the action—must personally give (serve) a court file-stamped copy of this Form GV-109 to the Respondent, along with a copy of all the forms indicated below:

- a. GV-100, *Petition for Gun Violence Restraining Order* (file-stamped)
- b. GV-110, *Temporary Gun Violence Restraining Order* (file-stamped) **IF GRANTED**
- c. GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)
- d. GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*
- e. GV-250, *Proof of Service by Mail* (blank form)
- f. Other (specify): _____

Date: _____

Judicial Officer

To the Petitioner in 1 :

- The court cannot make an order at the court hearing unless the Respondent has been personally given (served) a copy of the Petition and a temporary order if issued. To show that the Respondent has been served, the person who served the forms must fill out a proof of service form. Form GV-200, *Proof of Personal Service*, may be used.
- For information about service, read Form GV-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the Respondent in time, you may ask for a later hearing date, which will give you more time to serve the documents. Use Form GV-115, *Request to Continue Court Hearing for Gun Violence Restraining Order*.



To the Respondent:

- If you want to respond to the *Petition for Gun Violence Restraining Order* in writing, file Form GV-120, *Response to Petition for Gun Violence Restraining Order* and have someone age 18 or older—**not you**—mail it to the Petitioner.
- The person who mailed the form must fill out a proof of service form. Form GV-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 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 order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may order you to turn in to law enforcement, or sell to or store with, a licensed gun dealer, any firearms, ammunition, or magazines that you own or possess. If issued, the order will last for one year.



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

Clerk stamps date here when form is filed.

DRAFT

10-24-18

**Not approved by
the Judicial Council**

Petitioner 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 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

② Respondent

Full Name: _____

Description: _____

Sex: M F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to Petitioner: _____

The court will complete the rest of this form.

③ Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ a.m. p.m.

This is a Court Order.



6 Order Prohibiting All Firearms, Ammunition, and Magazines

- a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm or ammunition, including magazines (ammunition feeding devices).
- b. The court has received credible information that you own or possess one or more firearms, ammunition, or one or more magazines that have not been surrendered or sold. You must:
- (1) Surrender all firearms and ammunition, including magazines, in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms and ammunition, including magazines, to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must surrender all of your firearms and ammunition, including magazines, within 24 hours of being served with this Order. You may do so by:
 - (1) surrendering all of your firearms and ammunition, including magazines, in a safe manner to the local law enforcement agency; or
 - (2) selling all of your firearms and ammunition, including magazines, to a licensed gun dealer; or
 - (3) storing all of your firearms and ammunition, including magazines, with a licensed gun dealer for as long as this Order or any more permanent order granted at the hearing in item ③ is in effect.
 - (2) Within 48 hours of receiving this Order, file a receipt with the court that proves that your firearms and ammunition have been turned in, sold, or stored. (*You may use Form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.*) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

7 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this order is in effect. A hearing will be held on the date and at the time noted on Page 1 to determine if a more permanent gun violence restraining order should be issued. Failure to appear at the hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with the Order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the Order.

Violation of this Order is a misdemeanor. If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be changed only by an order of the court.

This is a Court Order.



After You Have Been Served With a Temporary Order

- Obey the order by turning in all firearms, ammunition, and magazines to a law enforcement agency or selling them to or storing them with a licensed gun dealer.
- Read Form GV-120-INFO, *How Can I Respond to a Petition for Gun Violence Restraining Order?*, to learn how to respond to this Order.
- If you want to respond, fill out Form GV-120, *Response to Petition for Gun Violence Restraining Order*, and file it with the court clerk.
- You must have Form GV-120 served by mail on the Petitioner or the Petitioner's attorney. You cannot do this yourself. The person who does the mailing should complete and sign Form GV-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make a gun violence restraining order against you that lasts for one year. Tell the judge why you disagree with the order requested.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Respondent must do the following:

- Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control.
- Order the Respondent to immediately surrender all firearms, ammunition, and magazines to him or her.
- Issue a receipt to the Respondent for all firearms, ammunition, or magazines that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms, Ammunition, or Magazines

The law enforcement agency that has received surrendered firearms, ammunition, or magazines must do the following:

- Retain the firearms, ammunition, or magazines until the termination or expiration of this Order or of any other gun violence restraining order issued by the court.
- On the expiration of this Order or of any later gun violence restraining order issued by the court, return the firearms, ammunition, or magazines to the respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms, ammunition, or magazines that are not claimed are subject to the requirements of section 34000.

This is a Court Order.



Instructions for Law Enforcement*(continued)*

- If someone other than the Respondent claims title to any of the firearms, ammunition, or magazines surrendered, determine whether that person is the lawful owner. If so, return the firearms, ammunition, or magazines to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent “served” (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The Respondent was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the Respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it (*see above: Duties of Officer Serving This Order*).

The provisions in this *Temporary Gun Violence Restraining Order* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

*(Clerk will fill out this part.)**Clerk's Certificate**[seal]***—Clerk's Certificate—**

I certify that this *Temporary Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

1 Party Seeking Continuance

a. Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Other Party

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Request to Continue Hearing

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

a. A Temporary **Gun Violence** Restraining Order (Form GV-110) was issued on (date): _____
Please attach a copy of the order.

b. I request that the hearing be continued because (check one or both):

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

(2) Other reasons as stated: below on Attachment 3b(2)


c. (1) This is the first request for a continuance.

(2) The hearing has previously been continued _____ times.

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

Date: _____

Type or print your name

 _____
Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-09-18
Not approved by
the Judicial Council**

Party seeking continuance complete items ①, ②, and ③ a.

① Party Seeking Continuance

a. Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Other Party

Full Name: _____

③ New Hearing Date

a. A hearing in this case is currently set for (date): _____ at (time): _____

b. The court orders a new hearing date:

(1) at the request of the Petitioner (2) at the request of the Respondent (3) in its discretion

c. Because:

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

(2) the parties have agreed to postpone the hearing and ask for a new hearing date.

(3) for the reasons stated below on Attachment 3c

④ Order for Continuance and Notice of Hearing

The court hearing on the **Petition for Gun Violence Restraining Order** (Form GV-100) is continued and rescheduled:

Name and address of court if different from above:

**Hearing
Date**

Date: _____ Time: _____

Dept.: _____ Room: _____



5 Extension of Temporary Restraining Order

- a. No Temporary Restraining Order was issued in this case.
- b. The Temporary Restraining Order (TRO; form GV-110) issued on (date): _____ is extended until the new hearing date.

6 No Fee to Serve

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

Warning and Notice to the Respondent:

If a Temporary **Gun Violence Restraining Order** (Form GV-110) was issued, it remains in full force and effect until the new hearing date. You must continue to obey it until the end of the hearing.

7 Service of Order

A copy of this Order must be served by the requesting party on the other party at least ____ days before the hearing unless both parties were in court at the time the continuance was granted.

A copy of form GV-100, *Petition for Gun Violence Restraining Order*, and form GV-110, *Temporary Gun Violence Restraining Order*, must also be served on the Respondent if he or she was not previously served. A proof of service should be filed with the court before the original hearing date.

Date: _____

Judicial Officer



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk’s office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Notice of New Hearing Date* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
Not approved by
the Judicial Council**

Use this form to respond to the Petition (form GV-100)

- Read *How Can I Respond to a Petition for a Gun Violence Restraining Order?* (form GV-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to his or her lawyer. (Use form GV-250, Proof of Service by Mail.)

1 Petitioner

Name of person seeking order (see form GV-100, item 1):

Fill in court name and street address:

Superior Court of California, County of

2 Respondent

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

See Petition for case number and fill in:

Case Number:

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: _____

3 Gun Violence Restraining Order

- I do not agree to the order requested in the Petition because:
- Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from form GV-109 item 3 here:

Hearing Date → Date: _____ Time: _____
 Dept.: _____ Room: _____

If a Temporary Gun Violence Restraining Order was issued, you must obey it until the hearing. At the hearing, the court may make an order against you for one year.

4 Denial

I did not do anything described in item 5 of form GV-100.



5 **Justification or Excuse**

If I did some or all of the things that the Petitioner has accused me of, my actions were justified or excused for the following reasons (*explain*):

Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5-Justification or Excuse" as a title. You may use form MC-025, Attachment.

6 **Surrender of Guns, Ammunition, and Magazines**

If a Temporary Gun Violence Restraining Order (form GV-110) was issued, you cannot own or possess any guns, other firearms, ammunition, or magazines. (See item 6 of form GV-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns, other firearms, ammunition, or magazines in your immediate possession or control within 24 hours of being served with form GV-110. You must file a receipt with the court. You may use form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.

- a. I do not own or control any guns, other firearms, ammunition, or magazines.
b. I have turned in my guns, other firearms, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
 is attached. has already been filed with the court.

7 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

Lawyer's signature

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

Date: _____

Type or print your name

Sign your name

What is a gun violence restraining order?

It is a court order that prohibits someone from having any guns, ammunition, or magazines (any ammunition feeding device). The person must surrender all guns, ammunition, and magazines that he or she currently owns.

Who can ask for a gun violence restraining order?

The petition must have been filed by a law enforcement officer or an immediate family member of yours. Immediate family members include (1) your spouse or domestic partner; (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent; (3) your spouse's parents, children (your stepchildren), siblings, grandparents, and grandchildren; and (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

I've been served with a Petition for Gun Violence Restraining Order. What do I do now?

Read the papers served on you very carefully. The Notice of Court Hearing tells you when to appear in court. There may also be a Temporary Gun Violence Restraining Order prohibiting you from having any guns, ammunition, or magazines and requiring you to surrender, sell, or store any guns, ammunition, or magazines that you currently own or possess. You must obey the order until the hearing.

What if I don't obey the temporary order?

The police can arrest you. You can go to jail and pay a fine.

What if I don't agree with what the order says?

If you disagree with the order that the Petitioner is asking for, fill out Form GV-120, Response to Petition for Gun Violence Restraining Order, before your hearing date and file it with the court. You can get the form from legal publishers or on the Internet at www.courts.ca.gov. You also may be able to find it at your local courthouse or county law library.

Will I have to pay a filing fee?

No.

Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—not you—mail a copy of completed Form GV-120 to the person who asked for the order (or that person's lawyer). (This is called "service by mail.")

The person who serves the form by mail must fill out Form GV-250, Proof of Service by Mail. Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on Form GV-109, Notice of Court Hearing. If you do not go to the hearing, the judge can extend the order against you for up to one year without hearing from you.



Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. It is probably best not to talk to him or her unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. (You can use Form MC-030, *Declaration*, for this purpose.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide whether to issue a gun violence restraining order that can last for one year.

Can I agree with the protected person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. You would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court's clerk or [self-help center](#) if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court 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.)

For help in your area, contact:

[Local information may be inserted.]

Clerk stamps date here when form is filed.

**DRAFT
10-15-18
Not approved by
the Judicial Council**

Petitioner must complete items ① and ② only.

① Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

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 Respondent

Full Name: _____

Description:

Sex: M F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to Petitioner: _____

The court will complete the rest of this form.

③ Expiration Date

This Order expires at:

(Time): _____ a.m. p.m. midnight on (Date): _____

If no expiration date is written here, this Order expires one year from the date of issuance.

This is a Court Order.



4 Hearing

- a. There was a hearing on *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____.
(Name of judicial officer): _____ made the orders at the hearing.
- b. These people were at the hearing:
 - (1) The Petitioner (3) The lawyer for the Petitioner *(name)*: _____
 - (2) The Respondent (4) The lawyer for the Respondent *(name)*: _____

5 Findings

- a. The court finds by clear and convincing evidence that both of the following are true:
 - (1) Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, **or magazines.**
 - (2) A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.
- b. The court has received credible information that the Respondent owns or possesses one or more firearms, ammunition, **or one or more magazines.**
- c. The facts as stated in the Petition and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.
and/or for the reasons set forth below.

See the attached Form MC-025, *Attachment*

6 No Fee to Serve

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

This is a Court Order.



7 Order Prohibiting All Firearms, Ammunition, and Magazines

- a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine (any ammunition feeding device).
- b. You must:
- (1) Surrender all firearms, ammunition, and magazines in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms, ammunition, and magazines to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must dispose of all of your firearms, ammunition, and magazines within 24 hours of receiving notice of this order. You may do so by either: (1) surrendering all of your firearms, ammunition, and magazines in a safe manner to the local law enforcement agency; or (2) selling all of your firearms, ammunition, and magazines to a licensed gun dealer; or (3) storing all of your firearms, ammunition, and magazines with a licensed gun dealer for as long as this Order is in effect.
 - (2) Within 48 hours of receiving this Order, or if the court is closed, then on the next business day, file a receipt with the court that proves that all of your guns or firearms, ammunition, and magazines have been turned in, sold, or stored. (*You may use Form GV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.*) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

8 Service of Order on Respondent

- a. The Respondent personally attended the hearing. No other proof of service is needed. The clerk has provided the Respondent with a blank copy of Form GV-600, *Request to Terminate Gun Violence Restraining Order*.
- b. The Respondent did not attend the hearing. The Respondent must be personally served with a court file-stamped copy of this Order and a blank copy of Form GV-600, *Request to Terminate Gun Violence Restraining Order*, by a law enforcement officer or someone age 18 or older - **and not a party to the action.**

9 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this Order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

This is a Court Order.

Violation of this Order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.) If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any firearm, ammunition, or magazines for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be terminated only by an order of the court.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this Order on the Respondent must do the following:

- Ask the restrained person if he or she has any firearm, ammunition, or magazines in his or her possession or under his or her custody or control.
- Order the Respondent to immediately surrender all firearms, ammunition, and magazines to him or her.
- Issue a receipt to the Respondent for all firearms, ammunition, and magazines that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms and Ammunition

The law enforcement agency that has received surrendered firearms, ammunition, or magazines must do the following:

- Retain the firearms, ammunition, or magazines until the expiration of this order or of any other gun violence restraining order issued by the court.
- On the expiration of this order or of any later gun violence restraining Order issued by the court, return the firearms and ammunition to the Respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms, ammunition, or magazines that are not claimed are subject to the requirements of section 34000.
- If someone other than the Respondent claims title to any of the firearms, ammunition, or magazines surrendered, determine whether that person is the lawful owner. If so, return the firearms, ammunition, and magazines to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The respondent was informed of the Order by an officer.
- Item 8a is checked.

This is a Court Order.



Instructions for Law Enforcement

(continued)

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it (*see above: Duties of Officer Serving This Order*).

The provisions in this *Gun Violence Restraining Order After Hearing* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Gun Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-24-18
Not approved by
the Judicial Council**

1 Petitioner

Name: _____

2 Respondent

Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be the Petitioner unless the Petitioner is a law enforcement officer.
- Give a copy of all documents checked in **4** to the Respondent. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the Petitioner.



Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

PROOF OF PERSONAL SERVICE

4 I personally gave the Respondent a copy of the forms checked below:

- a. GV-100, *Petition for **Gun Violence** Restraining Order*
- b. GV-109, *Notice of Court Hearing*
- c. GV-110, *Temporary **Gun Violence** Restraining Order*
- d. GV-116, *Order for Continuance and Notice of New Hearing Date*
- e. GV-120, *Response to Petition for **Gun Violence** Restraining Order* (blank form)
- f. GV-120-INFO, *How Can I Respond to a Petition for a **Gun Violence** Restraining Order?*
- g. GV-130, ***Gun Violence** Restraining Order After Hearing*
- h. GV-600, *Request to Terminate **Gun Violence** Restraining Order* (blank form)
- i. GV-800, *Proof of Firearms Turned In, Sold, or Stored* (blank form)
- j. Other (specify): _____

5 I personally gave copies of the documents checked above to the Respondent:

- a. On (date): _____ b. At (time): _____ a.m. p.m.
- c. At this address: _____
City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____ _____
Type or print server's name Server to sign here

What is “service”?

Service is the act of giving your legal papers to the other party. There are many kinds of service—in person, by mail, and others. This form is about personal or “in-person” service. The *Petition for Gun Violence Restraining Order* (Form GV-100), the *Notice of Court Hearing* (Form GV-109), and the *Temporary Gun Violence Restraining Order* (Form GV-110) must be served “in person.” That means that someone must personally “serve” (give) a copy of the forms to the respondent (the person to be prohibited from having guns).

These forms cannot be served by mail; they must be given to the respondent personally.

Service lets the respondent know:

- Why you are asking for a **Gun Violence** Restraining Order;
- The hearing date;
- How to respond.

Why do I have to get the orders served?

- The police cannot arrest anyone for violating an order unless that person knows about the order.
- No hearing can be held to extend the order for a year unless the respondent was served and knows about the hearing.

Don't serve it by mail!



Who can serve?

Any law enforcement officer may serve the respondent, even if the petition was filed by a law enforcement officer. **It is recommended that you ask a law enforcement officer to serve the forms because of the potential for gun violence. A sheriff or marshal will serve the order at no cost to you.**

However, service may also be by any person who is at least 18 years old and not a party to the action. That means that if the petitioner is a family member rather than a law enforcement officer, that person may not serve the forms on the respondent. You may use a process server. A “registered process server” is a business that you pay to deliver court forms. Look for “Process Serving” in the Yellow Pages or on the Internet.

How to serve

Ask the server to:

- Make personal contact with the person to be served.
- Make sure it is the right person. Ask the person’s name.
- Give the person copies of all papers checked on Form GV-200, *Proof of Personal Service*.
- Fill out and sign the *Proof of Personal Service* form.
- Give the signed *Proof of Personal Service* to you.

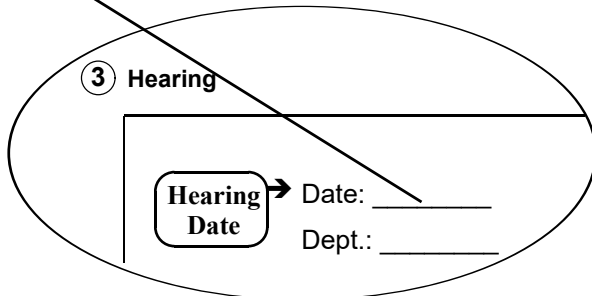
What if the person won’t take the papers or tears them up?

- If the person won’t take the papers, just leave them near him or her.
- It doesn’t matter if the person tears them up. Service is still complete.

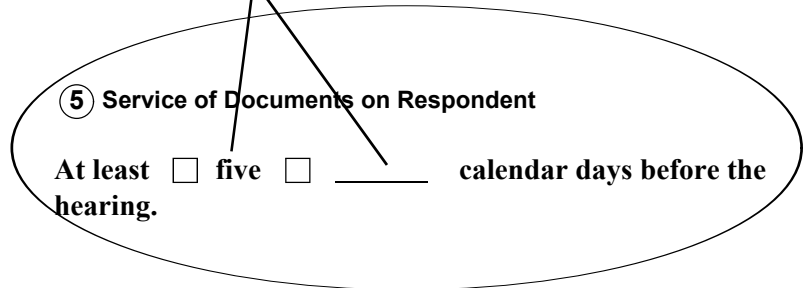
When do the orders have to be served?

It depends. To know the exact date, you have to look at two things on Form GV-109, *Notice of Court Hearing*:

First, look at the hearing date on page 1 of Form GV-109.



Next, look at the number of days in item ⑤ on page 2 of Form GV-109.



Look at a calendar. Subtract the number of days in ⑤ from the hearing date. That is the final date to have the orders served. It is always OK to serve earlier than that date. If nothing is checked or written in ⑤, you must serve the orders at least five days before the hearing.

Who signs the Proof of Personal Service?

Only the person who serves the forms can sign Form GV-200, *Proof of Personal Service*. You do not sign it; the restrained person does not need to sign it.

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

If someone other than a law enforcement officer serves the papers, you should:

- Make several copies.
- File the original with the court before your hearing.
- Bring a copy of the completed *Proof of Personal Service* to your hearing.
- Always keep an extra copy of the restraining orders with you for your safety.

What happens if I can't get the orders served before the hearing date?

You will need to ask the court to “continue” (postpone and reschedule) the hearing until after you are able to have the respondent served. Fill out and file Form GV-115, *Request to Continue Court Hearing for Gun Violence Restraining Order*. If the court grants you a continuance, the *Temporary Gun Violence Restraining Order* (Form GV-110) will remain in effect until the new hearing date.

Clerk stamps date here when form is filed.

**DRAFT
10-04-08
Not approved by
the Judicial Council**

1 Petitioner

Full Name: _____

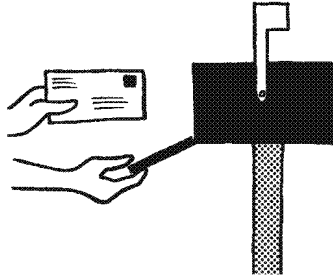
2 Respondent

Full Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Live or be employed in the county where the mailing took place.
- Not be a party to the case.
- Mail a copy of all documents checked in **(4)** to the person in **(1)**.
- Complete and sign this form and give it to the person in **(2)**.



Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

4 PROOF OF SERVICE BY MAIL

I am 18 years of age or older and not a party to this case. I live or am employed in the county where the mailing took place. I mailed the Petitioner Respondent a copy of all documents checked below:

- a. Form GV-120, *Response to Petition for Gun Violence Restraining Order*
- b. Other (specify): _____

5 I placed copies of the documents above in a sealed envelope and mailed them as described below:

- a. Mailed to (name): _____
- b. To this address: _____
City: _____ State: _____ Zip: _____
- c. On (date): _____ Mailed from City: _____ State: _____

6 Server's Information

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____

Type or print server's name

Server to sign here

Case Number: _____


- c. I have not previously requested that the court terminate the Order.
 The Order has been renewed. I have not previously requested that the court terminate the Order since it was renewed.

*(You may only request termination of a **gun violence** restraining order once during the initial period while the order is in effect and once during any period of renewal. If the court denies your request, you may not request termination again unless the order is renewed for another year.)*

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

Date: _____

Type or print your name

 _____
Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

Respondent completes items ① and ②.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

① Respondent

- a. Full Name: _____
- b. Your Lawyer (if you have one for this case):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

② Petitioner

- a. Full Name: _____
- b. Address (if known): _____
 City: _____ State: _____ Zip: _____

③ Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

**Hearing
Date** →

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

To the Respondent:

④ Service

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Petitioner:

- GV-600, Request to Terminate **Gun Violence Restraining Order**;
- GV-610, Notice of Hearing on Request to Terminate **Gun Violence Restraining Order** (this form); and
- GV-620, Response to Request to Terminate **Gun Violence Restraining Order** (blank copy).

This is a Court Order.



- The forms must be personally served on the Petitioner _____ days before the hearing.
- The forms may be served by mail on the Petitioner or the Petitioner's attorney _____ days before the hearing.

The person who serves the forms must fill out either Form GV-200, *Proof of Personal Service*, or Form GV-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the completed proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see Form GV-200-INFO, *What is "Proof of Personal Service"?*.

Date: _____

Judicial Officer

To the Petitioner:

If you wish to make a written response to this request to terminate the current firearms restraining order, you may fill out Form GV-620, *Response to Request to Terminate Gun Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the other party at the address in ① at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail*, with the court before the hearing.

Request for Accommodations



Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Terminate Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
 [seal]

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

Use this form to respond to the Request to Terminate Gun Violence Restraining Order (Form GV-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Respondent at the address in (2) below. Use Form GV-250, *Proof of Service of Response by Mail*.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18
Not approved by
the Judicial Council**

1 Petitioner

a. Your Name: _____
 I am: A family member of the Respondent.
 A law enforcement officer employed by
 (name of law enforcement agency): _____

 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. Law enforcement officer, give agency information.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will consider your response at the hearing. Write your hearing date, time, and place from Form GV-610 item (3) here.

Hearing Date → Date: _____
 Time: _____
 Dept.: _____ Room: _____

2 Respondent

Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____

3 Response

- a. I do not oppose termination of the order.
- b. I oppose termination of the order for the following reasons (specify below):
 Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Terminate" for a title. You may use Form MC-025, Attachment.
- _____

Case Number:

Date: _____

Lawyer's name, if you have one



Lawyer's signature

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

Date: _____

Type or print your name



Sign your name

To the Petitioner:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-620 to the Respondent or to the Respondent's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service by Mail*. Have the person who did the mailing sign the original. Take the completed Proof of Service form back to the court clerk or bring it with you to the hearing.

Clerk stamps date here when form is filed.

DRAFT

10/15/18

Prevailing party completes items ① and ②. If the Order is granted, the Respondent is the prevailing party. If the Order is denied, the Petitioner is the prevailing party.

① Respondent

- a. Full Name: _____
- b. Your Lawyer (if you have one for this case):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Petitioner

- Full Name: _____
- Address (if known): _____
- City: _____ State: _____ Zip: _____

③ Hearing

There was a hearing on (date): _____ at time: _____ a.m. p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

- a. The Petitioner
- b. The Respondent
- c. The lawyer for the Petitioner (name): _____
- d. The lawyer for the Respondent (name): _____

④ Findings

The court finds that there is no longer clear and convincing evidence that:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines; and

This is a Court Order.



A **gun violence** restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

There remains clear and convincing evidence that grounds continue to exist to support the order.

5 Order on Request to Terminate

The request to terminate the **Gun Violence Restraining Order After Hearing** (Form GV-130), originally issued on (date): _____ and most recently renewed on (date): _____, is:

- a. **GRANTED.** The order is terminated as of (date of hearing) _____
- b. **DENIED.** The order and expiration date remain in effect.

To the Prevailing Party:

6 Service of Order

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented, you are required to serve the attorney instead of the party.

- Order Granted**—The Petitioner attended the hearing. **No further service is required.**
- Order Granted**—The Petitioner did not attend the hearing. **Service is required:** This Order:
 - Must be personally served on the Petitioner within _____ days of the date of this Order.
 - May be served by mail on the Petitioner within 5 days of the date of this Order.
- Order Denied**—If the Petitioner did not attend the hearing -- **Service by Mail:** The Petitioner may be served with this Order by mail.

Date: _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Order on Request to Terminate Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-04-18**

**Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Respondent

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the Gun Violence Restraining Order After Hearing (Form GV-130) for an additional period of one year. A copy of the order is attached.

a. The order currently will end on (date): _____
(If the order has already expired, you must file a new petition.)

b. This is my first request to renew the order.
 The order has been renewed _____ times.

c. I ask the court to renew the order because (explain below):

Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Reasons to Renew Order" for a title. You may use Form MC-025, Attachment.

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

Date: _____

Type or print your name



Sign your name

This is not a Court Order.

Clerk stamps date here when form is filed.

**DRAFT
10-15-18**

**Not approved by
the Judicial Council**

Petitioner completes items ① and ② .

① Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency):

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. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

② Respondent

Full Name: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

③ Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect.

**Hearing
Date** →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

This is a Court Order.



To the Petitioner:

4 Service on Respondent

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Respondent

- GV-700, *Request to Renew Gun Violence Restraining Order*;
- GV-710, *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (this form);
- GV-720, *Response to Request to Renew Gun Violence Restraining Order* (blank copy);

- The forms must be personally served on the Respondent _____ days before the hearing.
- The forms may be served by mail on the Respondent or the Respondent's attorney _____ days before the hearing.

Date: _____

Judicial Officer

To the Respondent:

At the hearing, the judge can renew the current restraining order for another year. You *must* continue to obey the current restraining order. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* continue to obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out Form GV-720, *Response to Request to Renew Gun Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the Petitioner at the address in ① at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail*, with the court before the hearing or bring it with you to the 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 *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 Hearing on Request to Renew Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

Use this form to respond to the Request to Renew Gun Violence Restraining Order (Form GV-700).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner at the address in ① below. Then file Form GV-250, *Proof of Service by Mail* with the court.

Clerk stamps date here when form is filed.

DRAFT

10-04-18

**Not approved by
the Judicial Council**

① Petitioner (From Form GV-700, item ①)

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Fill in court name and street address:

Superior Court of California, County of

② Respondent

a. Your Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

Fill in case number:

Case Number:

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: _____

The court will consider your *Response* at the hearing. Write your hearing date, time, and place from Form GV-710 item ③ here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

You must continue to obey the current restraining order until the hearing. At the hearing, the court can extend the order against you for another year.

③ Response

- a. I do not oppose renewal of the order.
- b. I oppose renewal of the order for the following reasons (specify below):

Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Renew" for a title. You may use Form MC-025, Attachment.



Case Number: _____

Date: _____

Lawyer's name, if you have one

▶ _____
Lawyer's signature

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

Date: _____

Type or print your name

▶ _____
Sign your name

To the Respondent:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-720 to the Petitioner or to the Petitioner's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service of Response by Mail*. Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Clerk stamps date here when form is filed.

DRAFT

10.15.18

Prevailing party completes items ① and ②. If the Order is granted, the Petitioner is the prevailing party. If the Order is denied, the Respondent is the prevailing party.

① Petitioner

a. Your Full Name: _____

I am: A family member of the Respondent
 A law enforcement officer employed by
(name of law enforcement agency): _____

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 Respondent

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

③ Hearing

There was a hearing on (date): _____ at time: _____ a.m. p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

- a. The Petitioner
- b. The Respondent
- c. The lawyer for the Petitioner (name): _____
- d. The lawyer for the Respondent (name): _____

This is a Court Order.



4 Order on Request for Renewal

The request to renew the attached *Gun Violence Restraining Order After Hearing* (Form GV-130), originally issued on (date): _____, is:

- DENIED.** The attached order expires as stated in item ③ of the order.
- GRANTED.** The attached order is renewed for one year and will now expire:

on (date): _____ at (time): _____ a.m. p.m. or midnight

If no expiration date is written here, the order expires one year from the date of the hearing in item ③.

- a. The court finds by clear and convincing evidence that both of the following are true:
 - (1) Respondent continues to pose a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, ammunition, or magazines.
 - (2) A gun violence restraining order remains necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.
- b. The facts as stated in the *Request to Renew Gun Violence Restraining Order* (Form GV-700) and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.

and/or for the reasons set forth below.

See the attached Form MC-025, *Attachment*

- c. **To the Respondent: If this order is renewed, it will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.**

This is a Court Order.



To the Prevailing Party:

5 Service of Order

Someone age 18 or older—**not you**—must serve a copy of this order on the other party.

- Order Granted**—The Respondent attended the hearing. **No further service is required.**
- Order Granted**—The Respondent did not attend the hearing. **Personal service is required.** The Respondent must be personally served with this Order. *(After the Respondent has been served, file Form GV-200, Proof of Personal Service with the court clerk. For help with service, read Form GV-200-INFO, What is "Proof of Personal Service"?.)*
- Order Denied—Service by Mail**—If the Petitioner did not attend the hearing, the Petitioner may be served with this Order by mail. *(After the Petitioner has been served, the person doing the mailing should fill out Form POS-030, Proof of Service by First-Class Mail—Civil. File the form with the court clerk. For help with service by mail, read the Information Sheet on page 2 of Form POS-030.)*

Date: _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Order on Request to Renew Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

This is a Court Order.

1 What is a firearm?

A firearm is a:

- Handgun • Rifle
- Shotgun • Assault weapon

If you own or have any firearms, ammunition, or magazines, you must:

**2** • If demanded, give them to the law enforcement officer when he or she serves you with the court order requiring surrender; otherwise, within 24 hours:

- Turn them in to your local law enforcement agency; or
- Sell them to a licensed firearms dealer.
- Store them with a licensed firearms dealer.

3 How do I sell or store my firearms?

Find a California licensed firearms dealer in your area.

Look under “Firearms Dealers” in your local Yellow Pages or on the Internet. Make sure the dealer is licensed.

4 How do I surrender my firearms to law enforcement?

Call your local law enforcement agency to ask about their procedures. Take a copy of the court order with you. Go directly to the law enforcement agency. Do not go anywhere else with firearms in your vehicle!

5 If I turn my firearms in to law enforcement, how long will they keep them?

As long as any **gun violence** restraining order against you remains in effect.

6 After I give my firearms to law enforcement, can I change my mind?

Yes. You are allowed to sell them to a licensed gun dealer. To do this, the gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the firearms that you are selling.

7 Do I have to pay the law enforcement agency to keep my firearm?

You may have to pay the agency for keeping your firearms. Contact your local law enforcement agency and ask if a fee is charged. The agency will tell you how much you need to pay.

8 Do I have to prove that I have turned in, sold, or stored my firearms?

Yes. Within 48 hours you must file a receipt with the court and the law enforcement agency showing that you have surrendered your firearms to a law enforcement agency or sold them to or stored them with a licensed gun dealer. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for this purpose.

9 Questions?

Call your local law enforcement agency.

(Insert local information here.)

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Civil Practice and Procedure: Name Change and Gender Change Forms

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M. Ronan 415-865-8933 anne.ronan@jud.ca.gov

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

Approved by RUPRO: 09.28.18

Project description from annual agenda:

AB 2201 09/27/2018 The council has adopted mandatory forms for name change proceedings. For the forms to be in compliance with the law, they must be revised to reflect new categories of participants who can take part in the confidential name change program. Statute is operative January 1, 2019

AB 3250 09/26/2018 The council has adopted mandatory forms for name change and gender change proceedings. For the forms to be in compliance with the law they must be revised to reflect new categories of authorized petitioners, additional service requirements, and new OSC requirement., Statute is operative January 1, 2019.

If requesting July 1 or out of cycle, explain:

The proposed revised or new mandatory forms need to be adopted effective January 1, 2019 or the forms will not be in compliance with the new laws (cited above) that go into effect that day.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W19-03

Title

Civil Practice and Procedure: Name Change and Gender Change Forms

Proposed Rules, Forms, Standards, or Statutes

Adopt forms NC-510G and NC-530G; revise forms NC-100-INFO, NC-121, NC-125/NC-225, NC-400, NC-400-INFO, NC-420, NC-500, NC-500-INFO, and NC-520

Proposed by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Action Requested

Review and submit comments by February 8, 2019

Proposed Effective Date

Forms are effective January 1, 2019, and are being circulated for comments post-adoption

Contact

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

Executive Summary and Origin

The Judicial Council has recently adopted and revised several Name Change forms at the recommendation of the Civil and Small Claims Advisory Committee to reflect recently enacted legislative amendments that go into effect January 1, 2019. Assembly Bill 3250 (Stats. 2018, ch. 776) added new requirements for issuance and service of orders to show cause in certain name change and gender-change recognition proceedings initiated by parents or guardians, as well as requiring new judicial findings in gender-change recognition proceedings brought by guardians. Assembly Bill 2201 (Stats. 2018, ch. 818) added a new category of petitioners (those seeking to avoid human trafficking) to those who may seek confidential name changes.

The forms have been revised, and the two additional forms adopted, prior to circulation so that they will be correct when the laws become effective. The Civil and Small Claims Advisory Committee is now circulating these forms and seeking comments following adoption of the forms. The committee will recommend further revisions, based on the comments, if appropriate.

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

The Proposal

AB 3250

Many of the Name Change forms were previously revised this past year, effective September 2018, to implement the changes in procedures enacted in 2017 in Senate Bill 179 (Stats. 2017, ch. 853). This year, the Legislature passed AB 3250¹ to clean up some problems with implementing SB 179, particularly relating to procedures for petitions for minors, thus requiring further revisions to the forms. The Legislature chose to make those changes effective January 1, 2019, which means that the forms needed to be revised very quickly to ensure that parties and the courts act in compliance with the law when seeking name changes and gender change recognition.

Change of names to conform to gender identity. Last year, SB 179 altered the process for changing names to conform to gender identity so that it no longer parallels the process for other name changes, eliminating the automatic setting of a hearing and instead setting a hearing only if objections are filed showing good cause to oppose the name change. The hearing would be set within six weeks of issuance of the order to show cause (OSC), which the court issues when the petition is filed. The law included no requirement to publish this OSC or to serve it on anyone, even when the petition was on behalf of a minor. AB 3250 has further amended the statute to provide that when such a petition is made on behalf of a minor, the petition and OSC must be served on any nonsigning parent within 30 days of the date of receiving the order.²

The *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO, at item 4) and *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125/NC-225) have both been revised to reflect this change in the law. Item 3 on the OSC containing a statement from the statute that certain objections do not constitute good cause has also been revised to reflect the amended statutory language in AB 3250.³

Recognition of minor's change of gender identity. Last year SB 179 added a process for requesting an order recognizing a minor's change of gender and for issuance of a new birth certificate.⁴ The text of the 2017 statute assumes that a minor can bring the petition, and the forms adopted by the council this past year reflect that assumption,⁵ even though minors generally cannot file an action on their own in civil proceedings.⁶ The law also requires the petition to be signed by either one or both parents, the minor's guardian, or, if there is no living parent and no guardian, a near relative or friend. If not signed by all living parents, the petition

¹ AB 3250 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3250.

² See new Code Civ. Proc., § 1277.5(a)(2).

³ *Id.*, § 1277.5(c).

⁴ See new Health & Saf. Code, § 103430(e).

⁵ The current petition (form NC-500) lists both the minor and an adult as the petitioners, and the current instruction sheet (form NC-500-INFO) is directed to the petitioning minor.

⁶ See Code Civ. Proc., § 372(a) (requiring guardian ad litem) and 372(b) (providing for certain exceptions).

must be served on any living parent who did not sign it. (The statute contained no other service provisions.) The OSC on these petitions will include a hearing date.

This year, AB 3250 has cleaned up several aspects of these provisions of the Health and Safety Code, in the following ways:

- Does not treat the minor as the petitioner, thus clarifying that such petitions follow the general rule and are to be brought on behalf of a minor, not by the minor;⁷
- Corrects the deadline for service of the petition and OSC on nonsigning parents to at least 30 days before the hearing date set in the OSC;⁸
- Adds new service provisions, parallel to those in the name change statutes,⁹ for petitions brought by guardians or court-appointed dependency attorneys appointed as guardians ad litem (dependency attorneys), requiring that, if the minor's parents are deceased, all living grandparents known to the petitioner must be served with the petition and an OSC, not less than 30 days before the hearing date set in the OSC;¹⁰ and
- Requires that petitions brought by a guardian include certain information about the guardianship and the likelihood that the child will remain with the guardian until adulthood, just as in name change proceedings,¹¹ and requires that the court make a finding to that effect before granting the petition.¹²

Revisions have been made to the following forms to reflect these changes:

- *Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate and Change of Name* (form NC-500);
- *Instructions for Filing Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate and Change of Name* (form NC-500-INFO); and
- *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate and Change of Name* (form NC-520).

The minor is no longer listed as the petitioner in either the petition or the instruction sheet. The request in the petition (form NC-500, at item 4) for an OSC directed to living parents has been expanded to include a request for an OSC directed to grandparents, in appropriate cases. The instructions (form NC-500-INFO) on requesting a hearing and serving the OSC have been revised to address the new service requirements for guardians and dependency attorneys. The

⁷ See new Health & Saf. Code, § 103430(e)(1).

⁸ *Id.*, § 103430(e)(1)(A).

⁹ See Code Civ. Proc., § 1277(e).

¹⁰ See new Health & Saf. Code, § 103430(f)(2). (Note: This service requirement for dependency attorneys was also included in the name change provisions in AB 3250 (cf. new Code Civ. Proc., § 1277(e)), but those amendments were made ineffective by passage of the later-enacted SB 2201, which amended a different portion of section 1277.

¹¹ See Code Civ. Proc., §§ 1276(f) and 1278(d).

¹² See new Health & Saf. Code, § 103430(g).

OSC itself (form NC-520) has also been revised, to allow a court to issue it directed at grandparents if there are no living parents (the current form is directed solely to parents because under current law no other objectors had standing).¹³

Two new forms have also been adopted to implement the new requirements placed on gender-change recognition petitions brought by guardians or dependency attorneys:

- *Declaration of Guardian or Dependency Attorney* (form NC-510G) supplements the petition, providing the additional information required of petitioners who are guardians or dependency attorneys appointed to be guardians ad litem. This form parallels the existing supplemental form for guardians bringing name change petitions (form NC-110G), just as the statutory provisions parallel each other. It will be required with all gender-change recognition petitions brought for a minor by a guardian or dependency attorney, and so will be used in place of the NC-110G when a name change petition is made at the same time.
- *Order Recognizing Minor's Change of Gender and for Issuance of New Birth Certificate* (form NC-530G) is a new order form for petitions brought by guardians, needed so the court can make the additional findings required on such petitions under AB 3250. This form is based on the current combined gender change/name change order (form NC-230), but also includes the findings regarding guardianships from the name change order for petitions brought by guardians, form NC-130G.

SB 2201¹⁴

This bill, enacted after AB 3250,¹⁵ amends the provisions that allow certain categories of individuals who are members of the Safe at Home program, the address-confidentiality program run by the Secretary of State's office, to obtain confidential name changes. The new law adds a new category of individuals—those seeking to avoid human trafficking—to those who can use the confidential procedures.¹⁶ The following three forms used for those proceedings list the categories of those whose name changes may be kept confidential by the court, and therefore each has been revised to reflect this additional category:

- *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-400);
- *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO); and

¹³ The new statutory description relating to objections has also been included in the revised OSC.

¹⁴ SB 2201 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2201.

¹⁵ The date of enactment is pertinent only because it means that the provisions in SB 2201, Code of Civil Procedure section 1277, override the provisions of that section in AB 3250.

¹⁶ See new Code Civ. Proc. § 1277(b)(2).

- *Declaration in Support of Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-420).

In addition, the general name-change information sheet, *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO) has been revised to add the new category of those who can use these confidential proceedings. Both that form and form NC-400-INFO, directed at the confidential name changes, have also been revised to reflect the new provisions that eliminate the filing fee for name change petitions for minors who meet the requirements of the confidential name change procedures.¹⁷

Alternatives Considered

Because the forms would have been incorrect under the new law if not revised, the only alternative considered was when to recommend approval of the proposed revisions. The Civil and Small Claims Advisory Committee concluded, and the council agreed, that it was better to amend the forms quickly without prior comments, rather than to circulate them for comment first and have incorrect forms in use for the next nine months.

Fiscal and Operational Impacts

Training on the new statutory requirements and how these new and revised forms reflect those changes will be necessary for clerks, judicial officers, and court legal services and self-help offices. New training materials and internal procedures may need to be developed.

Attachments and Links

1. Forms NC-100-INFO, NC-121, NC-125/NC-225, NC-400, NC-400-INFO, NC-420, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530G, at pages 6–22
2. Link to Assembly Bill 3250,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3250
3. Link to Assembly Bill 2201,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2201

¹⁷ See new Gov. Code, § 70635.

INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF NAME

NC-100-INFO

1. Where to File

The petition for change of name must be filed in the superior court of the county where the person whose name is to be changed is a resident.

2. Whose Name May Be Changed

The petition may be used to change your own name and, under certain circumstances, the names of others (e.g., children under 18 years of age).

3. Confidentiality of Certain Names

If you are a participant in the Secretary of State's address confidentiality program (Safe at Home), your current and proposed names may be kept confidential. (Code Civ. Proc., § 1277(b).) See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO) for additional instructions.

4. What Forms Are Required

Prepare an original and two copies of each of the following documents:

- a. *Petition for Change of Name* (form NC-100)
- b. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition for Change of Name)* (form NC-110) (attach as many copies as necessary)
- c. *Order to Show Cause for Change of Name* (form NC-120) or, if applicable, *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125)
- d. *Decree Changing Name* (form NC-130 or, for guardians, form NC-130G)
- e. *Civil Case Cover Sheet* (form CM-010)

In addition, a guardian must prepare and attach a *Declaration of Guardian (Supplemental Attachment to Petition)* (form NC-110G) for each child whose name is to be changed.

5. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). There is no filing fee for minors in the State's address confidentiality program (Safe at Home).

6. Requesting a Court Hearing Date and Obtaining the Order to Show Cause

You should request a date for the hearing on the *Order to Show Cause for Change of Name* (form NC-120) at least six weeks in the future. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy.

If you are changing your name to conform to gender identity, you need not request a hearing date. Instead, complete the *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125) and take the completed form to the clerk's office. The clerk will obtain the judicial officer's signature, file the original, and give you a copy.

7. Publishing the Order to Show Cause

In most cases, a copy of the *Order to Show Cause* must be published in a local newspaper of general circulation once a week for **at least four consecutive weeks** before the date of the hearing. You must select the newspaper from among those newspapers legally qualified to publish orders and notices. The newspaper used must file a Proof of Publication with the superior court before the hearing. If no newspaper of general circulation is published in the county, the court may order the *Order to Show Cause* to be posted by the clerk. But you **do not have to publish** the order if you are seeking to change a name to conform to your gender identity or are a participant in (1) the State Witness Program, or (2) the address confidentiality program, and the petition alleges that you are petitioning (a) to avoid domestic violence, (b) to avoid stalking, (c) to avoid sexual assault, or (d) to avoid human trafficking.

8. Name Change for Children

- a. If you are a petitioning parent requesting the name change for a child under 18 years of age, and one of the parents, if living, does not join in consenting to the name change, the petitioning parent must have a copy of the *Order to Show Cause* or notice of the time and place of the hearing served on the nonconsenting parent. Service must be made **at least 30 days prior to the hearing**, under Code of Civil Procedure sections 413.10, 414.10, 415.10, or 415.40.
- b. If you are a petitioning parent or any other adult requesting the name change for a child **to conform to that child's gender identity** and a living parent does not join in the petition for the name change, you must have a copy of the petition and the *Order to Show Cause* served on the nonconsenting parent. Service must be made **within 30 days of the date the order is made by the court**, under Code of Civil Procedure sections 413.10, 414.10, 415.10, or 415.40.
- c. If the nonconsenting parent resides in California, the order or notice must be personally served on the nonconsenting parent. You cannot personally serve this document.
- d. If the nonconsenting parent resides outside California, that parent may be served by sending a copy of the order or notice by first-class mail, postage prepaid, return receipt requested.
- e. If you are the guardian of a minor and filing a petition to change the name of that minor, you must (1) provide notice of the hearing to any living parent of the child by personal service at least 30 days before the hearing (or as in b above), or (2) if either or both parents are deceased or cannot be located, serve notice of the hearing on the child's grandparents, if living, not less than 30 days before the hearing, under Code of Civil Procedure sections 413.10, 414.10, 415.10, or 415.40. *(If the minor's name is being changed to conform to gender identity, these notices and orders for grandparents need not be completed or served.)*

If you have served a parent or grandparent, file a copy of the completed *Proof of Service of Order to Show Cause* (form NC-121) with the court before the hearing.

9. Name Change for Person in Jail or Prison or on Parole

If you are a person in county jail, or under the jurisdiction of the Department of Corrections and Rehabilitation (in state prison, or on parole) you may file a petition to change your name, but must serve the petition on a government agency.

- If in county jail, you must provide a copy of the petition to the county sheriff's department. Check with the department as to how that should be done.
- If in state prison, you must provide a copy of the petition to the warden. Check with the warden's office as to how that should be done.
- If on parole, you must provide a copy of the petition to the regional parole administrator. Check with the administrator's office as to how that should be done.

After you have provided a copy to the sheriff, warden, or regional parole administrator, file a copy of the completed *Proof of Service By Mail* (form POS-030) with the court.

Note that the declaration on form NC-110 as to whether the petitioner is in jail or under jurisdiction of the California Department of Corrections and Rehabilitation is only for purposes of determining if service of the petition is required.

10. Court Hearing

If no written objection is filed at least two court days before the scheduled hearing, the court may grant the petition and sign the decree without a hearing. Check with the court to find out if a hearing will be held. If there is a hearing, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original decree.

If you filed a petition for name change to conform to gender identity, and timely objections were filed, the court may set a hearing date after receiving the objections. If it does, you will be sent a notice of the hearing date. Check with the court after the deadline for filing objections to see if a hearing date has been set. If there are no objections, the court will grant the petition and sign the decree without a hearing.

11. If you were born in California and want to amend a birth certificate to show the name change, you should contact the following office:

California Department of Public Health
Vital Records - MS 5103
P.O. Box 997410
Sacramento, CA 95899-7410

Phone: 916-445-2684
website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name change petitions, the times when petitions are heard, and the newspapers that may be used to publish the *Order to Show Cause*.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF <i>(name of each petitioner)</i> : <p style="text-align: center;">FOR CHANGE OF NAME</p>	
PROOF OF SERVICE OF ORDER TO SHOW CAUSE BY <input type="checkbox"/> PERSONAL DELIVERY <input type="checkbox"/> MAILING (OUTSIDE CALIFORNIA ONLY)	CASE NUMBER:

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this proceeding.

2. My residence or business address is *(specify)*:

3. I personally delivered or mailed a copy of the *(title of document)*:

as follows *(complete either a or b)*:

a. **Personal delivery.** I personally delivered a copy to the person served as follows:

- (1) Name of person served:
- (2) Address where delivered:

- (3) Date delivered:

- (4) Time delivered:

b. **Mail.** I am a resident of or employed in the county where the mailing occurred.

- (1) I enclosed a copy in an envelope and mailed the sealed envelope to the person served by first-class mail, postage prepaid, return receipt requested, to the address outside of California listed below.

- (2) The envelope was addressed and mailed as follows:

- (a) Name of person served:

- (b) Address on envelope:

- (c) Date of mailing:

- (d) Place of mailing *(city and state)*:

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITION OF (<i>Name of each petitioner</i>): <p style="text-align: right;">FOR CHANGE OF NAME</p>		
ORDER TO SHOW CAUSE FOR CHANGE OF NAME TO CONFORM TO GENDER IDENTITY		CASE NUMBER:

TO ALL INTERESTED PERSONS:

1. Petitioner (*name*): filed a petition with this court
for a decree changing name as follows:

	<u>Present name</u>		<u>Proposed name</u>
a.		to	
b.		to	
c.		to	
d.		to	

- THE COURT ORDERS that any person objecting to the name changes described above must file a written objection that includes the reasons for the objection within six weeks of the date this order is issued. If no written objection is timely filed, the court will grant the petition without a hearing.
- A hearing date may be set only if an objection is timely filed and shows good cause for opposing the name change. Objections based solely on concerns that the proposed change is not the person's actual gender identity or gender assigned at birth shall not constitute good cause. (See Code Civ. Proc., § 1277.5(c).)

NOTE: When a petition has been filed to change the name of a minor to conform to gender identity and the petition does not include the signatures of both living parents, the petition and this order to show cause shall be served on the parent who did not sign the petition, under section 413.10, 414.10, or 415.40, within 30 days from the date on which the order is made by the court.

Date:

JUDGE OF THE SUPERIOR COURT

ATTORNEY (leave blank if no attorney) NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): [CONFIDENTIAL]	STATE BAR NUMBER:	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITION OF (name of each petitioner): <p style="text-align: center;">[CONFIDENTIAL]</p>		
CONFIDENTIAL COVER SHEET NAME CHANGE PROCEEDING UNDER ADDRESS CONFIDENTIALITY PROGRAM (SAFE AT HOME)		CASE NUMBER:

INSTRUCTIONS: This petition for change of name is being brought by a petitioner who is a participant in the Secretary of State's address confidentiality program under Government Code section 6205 et seq. and who is petitioning (1) to avoid domestic violence, (2) to avoid stalking, (3) to avoid sexual assault, or (4) to avoid human trafficking. **As provided by Code of Civil Procedure section 1277(b), the current legal name of the petitioner must be kept confidential by the court and must not be published or posted in the court's calendars, indexes, or register of actions, or by any means or in any public forum.**

This Confidential Cover Sheet must be affixed to the first page of the petition and to any other documents filed in this name change action. (See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO).)

This cover sheet is affixed to the following documents (check all that apply):

1. *Petition for Change of Name* (form NC-100)
2. *Attachment to Petition for the Name Change* (form NC-110)
3. *Order to Show Cause for Change of Name* (form NC-120)
4. *Decree Changing Name* (form NC-130)
5. *Civil Case Cover Sheet* (form CM-010)
6. *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410)
7. *Declaration in Support of Application to File Documents Under Seal in Name Change Proceedings Under Confidentiality Program (Safe at Home)* (form NC-420)
8. *Order on Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-425)
9. *Other (describe):*

Date:

The name of the petitioner is to remain confidential UNLESS:

1. The petitioner's participation in the address confidentiality program is ended (Gov. Code, § 6206.7); or
2. The court finds by clear and convincing evidence that the allegations of domestic violence or stalking in the petition are false. (Code Civ. Proc., § 1278(b).)

1 Confidentiality in Name Change Proceedings

It is important that you understand that changing your name, especially confidentially, is a life-changing decision. It may make it more difficult for you to enforce a restraining order and significantly impair your ability to obtain a passport, apply for school programs, purchase or rent property, gain employment, get credit, start a business, and other matters.

The law provides confidentiality for a petitioner seeking a name change who is a participant in the Secretary of State’s confidential address program, Safe at Home, under Government Code section 6205 et seq., *and* who asserts reasons for a name change that include seeking (1) to avoid domestic violence, (2) to avoid stalking, (3) to avoid sexual assault, or (4) to avoid human trafficking. (One of these reasons must be stated in the papers filed with the *Petition for Change of Name*.)

By law, the court must keep the current legal name of such a petitioner confidential. The court must not publish or post the name in the court’s calendars, indexes, or registers of actions, or in any other place in which it might be accessible to the public. In addition, the proposed new name is not put into the court records at all and does not have to be published. (Code Civ. Proc., § 1277(b).)

To ensure this confidentiality for the name change proceeding, petitioners must follow the instructions below.

2 Is a Lawyer Necessary?

You are not required to have a lawyer, but it is highly advisable that you contact a lawyer or legal service agency to discuss the effects of a confidential name change.

3 How to Get Started

Before beginning the court process for a confidential name change, you must be an active participant in the Safe at Home program. You must complete and file a Notice of Intent of Name Change with the Safe at Home program at the Secretary of State’s Office. You will receive a letter from that program to show to the court, confirming that the you are an active participant in the confidential address program and that a Notice of Intent of Name Change is on file. You can reach the Safe at Home program by calling toll free 1-877-322-5227 or by going to the Web site at www.sos.ca.gov/safeathome.

4 Where to File

As with all name change petitions, the petition filed under the confidential address program must be filed in the

superior court of the county where the person whose name is to be changed presently lives.

5 Whose Name May Be Changed

The petition may be used to change one’s own name and, under certain circumstances, the names of others (e.g., children under 18 years of age). There are no filing fees for minors in the Safe at Home program.

6 Name Changes for Children

A petitioner in the confidential address program must comply with all the rules stated in item 8 in the *Instructions* on the back of the *Petition for Change of Name*, concerning serving notice of a name change petition for a child on the child’s parents or grandparents. The confidentiality provisions do not change those requirements. You will generally not be able to change a child’s name without notifying the other parent.

7 What Forms Are Required

Prepare an original and two copies of the forms described in item 4 of the *Instructions* on the back of the *Petition for Change of Name* (form NC-100). In addition:

- a. In the *Petition for Change of Name* (form NC-100), *Order to Show Cause for Change of Name* (form NC-120), and *Decree Changing Name* (form NC-130), include your present name where indicated. Instead of including the proposed new name, indicate that the new name is confidential and on file with the Secretary of State’s Safe at Home program.
- b. In the *Attachment to the Petition for Change of Name* (form NC-110), include the reasons for seeking the name change.
- c. Prepare and attach to the front of each document a *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-400). Do not include the petitioner’s current name on these forms. These forms will flag the documents as containing confidential information.

You will also need a copy of the letter from the Safe at Home program to take to the court when filing the petition, to confirm that you are in the confidential address program and have a Notice of Intent of Name Change on file. Keep a copy of that letter for your records.

8 Filing

Follow the instructions in item 5 of the *Instructions* on the back of the *Petition for Change of Name* (form NC-100). Prepare and attach a *Confidential Cover Sheet* (form

NC-400) to the *Civil Case Cover Sheet* (form CM-010), your petition, and any other document you file under that item.

9 Requesting a Court Hearing Date and Obtaining the Order to Show Cause

You should request a date for the hearing on the *Order to Show Cause For Change of Name* at least six weeks after the date you file the petition. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy.

10 No Requirement to Publish the Order to Show Cause

In most cases, the *Order to Show Cause* must be published in a local newspaper of general circulation. But a petitioner does not have to publish the order if he or she is a participant in the address confidentiality program and the petition alleges that he or she (1) is petitioning to avoid domestic violence, (2) is petitioning to avoid stalking, or (3) is, or is filing on behalf of, a victim of sexual assault.

11 Court Hearing

If no written objection is filed at least two court days before the hearing, the court may grant the petition without a hearing. Check with the court to find out if a hearing will be held. If there is a hearing, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original decree.

12 Application to File Documents Under Seal

If a petitioner in the confidential address program believes that the protections described above and required by law that keeping the current and future name confidential are not sufficient in a particular case, the petitioner may ask the court to file the petition and related documents under seal. Documents filed under seal are secured and kept separate from the public files.

For the court to order that the petition may be filed under seal, you must show facts to support the following findings by the court:

- There is an overriding interest that overcomes the right of public access to the record.
- That overriding interest supports sealing the name change documents.

- A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed.
- The proposed order to seal the records is narrowly tailored to protect that overriding interest.
- No less restrictive means than sealing the whole record exist to achieve the overriding interest.

A petitioner in the confidential address program may file an application to file records under seal following the procedures in rule 2.577 of the California Rules of Court. The application must be made on the *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410) and be accompanied by a *Declaration in Support of Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-420), containing facts sufficient to justify the sealing.

Attach a *Confidential Cover Sheet* (form NC-400) to the application. All the documents that you want filed under seal must be put in a sealed envelope, with a completed *Confidential Cover Sheet* (form NC-400) on top marked "Conditionally Under Seal." and lodged with the court. If the application is denied, the documents will be returned by the clerk unless you file written notice within 10 days that they should be filed unsealed.

13 Making the Records Public

Even if the documents are not sealed, as long as the other requirements are met, your name will remain confidential **UNLESS**:

- Your participation in the address confidentiality program is ended under Government Code section 6206.7; or
- The court finds by clear and convincing evidence that the allegations of domestic violence or stalking in the petition are false (see Code of Civil Procedure section 1278(b).)

If another person or a court wants to make the records public based on the above, the court must hold a hearing, with notice sent to the petitioner in care of the Safe at Home program, as permitted under Government Code section 6206(a)(5)(A).

Local courts may supplement these instructions. For instance, the court may provide you with additional written information identifying the department that handles name change petitions and the times when petitions are heard. Check with the court to determine whether supplemental information is available.

CONFIDENTIAL

NC-420

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITION OF (<i>name of each petitioner</i>):		
DECLARATION IN SUPPORT OF APPLICATION TO FILE DOCUMENTS UNDER SEAL IN NAME CHANGE PROCEEDING UNDER ADDRESS CONFIDENTIALITY PROGRAM (SAFE AT HOME)		CASE NUMBER:

I (*name*): _____ declare as follows:

1. I have personal knowledge of the facts stated in this declaration and could and would testify competently to those facts.
2. I am a participant in the Secretary of State's confidential address program, Safe at Home.
3. I am seeking a name change (*check all that apply*):
 - a. To avoid domestic violence.
 - b. To avoid stalking.
 - c. To avoid sexual assault.
 - d. To avoid human trafficking.
4. Facts showing that there is an overriding interest that overcomes the right of public access to the records in this name change proceeding are (*specify*):

Continued on Attachment 4 (*If you need more space, attach form MC-025.*)

5. Facts showing that the overriding interest described in item 4 supports filing the documents in this name change proceeding under seal are (*specify*):

Continued on Attachment 5. (*If you need more space, attach form MC-025.*)

PETITIONER:	CASE NUMBER:
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6. Facts showing that there is a substantial probability that the overriding interest described in item 4 will be prejudiced if the records in this name change proceeding are not sealed are *(specify)*:

Continued on Attachment 6. *(If you need more space, attach form MC-025.)*

7. Facts showing that an order sealing the records in this action is narrowly tailored to protect that overriding interest are *(specify)*:

Continued on Attachment 7. *(If you need more space, attach form MC-025.)*

8. Facts showing that there is no less restrictive means to protect that overriding interest than filing the entire record under seal are *(specify, including facts that show why the law requiring the court to keep the current name and the proposed name confidential, is not sufficient protection of that interest)*:

Continued on Attachment 8. *(If you need more space, attach form MC-025.)*

The number of pages attached is:

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):	
PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE <input type="checkbox"/> and CHANGE OF NAME	
<p>Use this form only for a petition relating to a minor. (Petitioners 18 years or older must use form NC-200 or NC-300.) Before you complete this petition, read the <i>Instructions for Filing</i> (form NC-500-INFO). Everyone must complete items 1 through 5 and the affidavit on the back. If you are seeking a name change in addition to recognition of gender change, you must also complete items 6, 7, and 8, and form NC-110. If the petition is being brought by a guardian or a dependency attorney appointed as guardian ad litem, also complete form NC-510G.</p>	

1. This request is being made by (minor's present name): _____ and (check one of the following)
 - a. two parents (names):
 - b. one parent (name):
 - c. near relative (name and relationship):
 - d. guardian or dependency attorney appointed as guardian ad litem (name):
 - e. other (specify):
2. Petitioners request a decree recognizing that minor's gender is changed to:
 - a. female.
 - b. male.
 - c. nonbinary.
3. Petitioners request the court to order that a new birth certificate be issued reflecting the gender change sought by this petition.
4. a. Petitioners request that the court issue an order directing any living parent who did not sign this petition to file written objections and appear to show cause why the petition for recognition of gender change should not be granted.
 - b. (Check if parents are deceased or cannot be located.) Petitioners request that the court issue an order directing any living grandparent to file written objections and appear to show cause why the petition for recognition of gender change should not be granted.
5. Living parents of petitioning minor who did not sign this petition are (specify names and addresses, or check a box below):

The minor has no living parent. The minor has no living parent other than the parent or parents who signed this petition.
6. Petitioners request that the court decree that the minor's name is changed to conform to minor's gender identity to (proposed name):

(If petitioner has already obtained a decree of change of name for the minor, attach a certified copy of the decree to this petition. If no name change is requested, skip items 6, 7, and 8, and go to Affidavit.)

PETITION OF <i>(name of each petitioner)</i> :	CASE NUMBER:
------------------------------------------------	--------------

7. Petitioners provide the following information in support of this petition:
- a. The affidavit on page 2 of this form.
 - b-f. The information contained in the attachment. *(If seeking a name change, you must attach a completed copy of the attachment Name and Information About the Person Whose Name Is to Be Changed (form NC-110).)*
8. The minor named in item 1 is a resident of this county. *(This must be checked if a name change is requested.)*

DECLARATION	
<p>I <i>(minor's present name)</i>: laws of the state of California that the request for a change in gender to <i>(check one)</i>: <input type="checkbox"/> female <input type="checkbox"/> male <input type="checkbox"/> nonbinary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.</p> <p>Date: _____</p> <p>_____ (TYPE OR PRINT NAME OF MINOR)</p>	<p style="text-align: right;">declare under penalty of perjury under the</p> <p style="text-align: right;">(SIGNATURE OF MINOR)</p>

Date: _____

 (TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)

 (SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date: _____

 (TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)

 (SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date: _____

 (TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)

 (SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date: _____

 (TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)

 (SIGNATURE OF PETITIONING PARENT/GUARDIAN)

INSTRUCTIONS FOR FILING PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE AND CHANGE OF NAME

1. Where to File

You may file a petition for a court order for recognition of a change of gender for a minor and issuance of a new birth certificate reflecting that change in the superior court of any county in California. (If the minor was born in California, you may file the order with the State Registrar and obtain a new birth certificate.) If your petition **includes a request to change the minor's name**, you must file in the superior court of the county where the minor whose name is to be changed presently resides.

2. What Forms Are Required

You need an original and two copies of each of the following forms.

- a. *Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-500)
- b. *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-520) (see item 5 below to determine if needed)
- c. *Order Recognizing Change of Gender and for Issuance of New Birth Certificate* (form NC-330 or form NC-530G if petitioner is a guardian)
- d. *Civil Case Cover Sheet* (form CM-010)
- e. *Declaration of Guardian or Dependency Attorney* (form NC-510G) (if petition being filed by one of those individuals)

If you are also seeking a name change for the minor, you also need an original and two copies of the forms listed at f, g, and possibly h below.

- f. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition for Change of Name)* (form NC-110) (not needed if petitioner is the minor's guardian or dependency attorney)
- g. *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125/NC-225) (see item 5 below)
- h. *Decree Changing Name and Order Recognizing Change of Gender and for Issuance of New Birth Certificate* (form NC-230)

3. Completing the Petition

Use form NC-500 only for a person under 18. (Adults seeking an order recognizing change of gender must use form NC-200 or NC-300.)

- Fill out the top left side of the form with your name, address, phone, and e-mail address (or your attorney's, if you have one) and the name and address of the court in which you are filing the form.
- In item 1, put the name of the minor and the name and relationship of the adult who is signing the petition. One or both parents or a guardian should sign. If neither parent is alive, and there is no guardian, a near relative or friend can sign. Check one of the boxes to show whether the person signing is a parent, guardian, near relative, or other (and describe what the "other" relationship is).
- Item 2 asks the court for a decree reflecting the minor's new gender. Check the box to indicate what gender the minor has changed to.
- Item 3 asks the court for an order that a new birth certificate be issued to reflect the change of gender.
- Item 4 asks the court to issue an order that will give notice to any living parent who did not sign the petition that any objections must be filed with the court. (This order is required by Health & Saf. Code, § 103435(e).) If parents are deceased or cannot be located and the petition is brought by a guardian or dependency attorney appointed as a guardian ad litem, check the box next to 4b to ask the court to issue an order that will give notice to any living grandparent. **(A guardian or dependency attorney must also complete form NC-510G.)**
- In item 5, put the name and address of any living parent of the minor who is not signing the petition. If there are no parents living, or none other than the person or persons signing the petition, check the appropriate box in item 5.
- If **not asking to change the name of the minor**, you can skip items 6, 7, and 8 on the form and go to the Declaration and signatures required at the end of the form. (See Declaration and Signatures instructions below.)
- If asking the court to **change the name of the minor** in this petition, complete the following items also:
 - Check the box in the title of the form, in front of "and CHANGE OF NAME."
 - Check item 6, and put the proposed new name in that item. (If you have already obtained a name change decree from a court that you want to have reflected in the new birth certificate, you do not need to get another decree or to check this box, but must attach a certified copy of that name change decree to this form.)
 - Check the box in item 7 and complete an additional form, form NC-110. If guardian or dependency attorney appointed as a guardian ad litem is the adult signing the petition, complete form NC-110G also. That form must be signed by the same adult signing this petition.
 - Check item 8, stating that the minor whose name is to be changed is a resident of the county in which you are filing.
- **Declaration and Signatures.** The minor may complete (check the box identifying the new gender) and sign the Declaration on the second page of the petition. Be sure the minor reads it carefully, because it is signed under penalty of perjury. The adult named in item 1 must also sign the form, and any living parent may also sign.

4. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition with any attachments required on page one of this information sheet and any order to show cause required below along with the *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition and any order to show cause. A filing fee will be charged unless you qualify for a fee waiver. If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO).

5. Requesting a Court Hearing Date and Serving the Order to Show Cause

A. Petition Requiring a Hearing.

You must request a hearing in the following situations:

- (1) One or more living parents of the minor has not signed the petition. That parent must be given notice and the right to object to the petition.
- (2) Petition is brought by a guardian or a dependency attorney appointed as a guardian ad litem and parents are deceased or cannot be located. In this case, any living grandparents known to petitioners must be given notice and the right to object to the petition.

If a hearing is required, you should request a date for a hearing on the *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate (and Change of Name)* (form NC-520) at least six weeks in the future. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy. You must have a copy of the completed *Order to Show Cause* showing the time and place of the hearing served on the nonsigning parent or grandparent at least 30 days before the hearing date, and you must file a Proof of Service with the court (you may use form NC-121). **If a nonsigning parent or grandparent lives in California, the form must be served on the parent in person. If a nonsigning parent or grandparent lives outside California, the form may be served either in person or by first-class mail requiring return receipt. If such service is not possible or if a nonsigning person lives outside the United States, then you may ask the court that service be done in another way.**

B. Petitions Not Requiring a Hearing.

If all parents of the minor now living have signed the petition, or if there are no living parents and the petition is brought by another adult who is not a guardian or a dependency attorney appointed as a guardian ad litem, then you need not request a hearing date and one of the following will apply:

- **If you are not requesting a name change**, you need not do anything further unless the court asks you to. The court will make the decision based on the petition you filed.
- **If you are requesting a name change in this petition**, you must complete the *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125/NC-225), take it to the clerk's office to obtain the judicial officer's signature, and file the original. You do not need to serve this form on anyone. If objections are filed within six weeks of the issuance of that form, the court will set a hearing date and send you and the objectors notice of the date, time, and place. If no objections are filed, the court will make the decision based on the petition you filed.

6. Court Hearing

If a hearing date was set, but no written objection is filed at least two court days before the hearing, the court may grant the petition without a hearing. Check with the court to find out if a hearing will be held. If a hearing is held, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original order: form NC-230 if your petition included a request for a name change and form NC-330 if it did not ask for a name change.

7. Domestic Violence Confidentiality Program

In cases where the petitioner is a participant in the state address confidentiality program (Safe at Home), the petition, the order to show cause, and the name change portion of the petition should, instead of giving the proposed name, indicate that the new name is confidential and on file with the Secretary of State. See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO).

8. Birth Certificate

If you were born in California, to obtain a new birth certificate reflecting the change of gender or name, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

California Department of Public Health

Vital Records – MS 5103

P.O. Box 997410

Sacramento, CA 95899-7410

Phone: 916-445-2684

Website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name and gender change petitions, and the times when petitions are heard.

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):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner): <p style="text-align: center;">FOR CHANGE OF GENDER (Minor)</p>	
ORDER TO SHOW CAUSE FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE and CHANGE OF NAME <input type="checkbox"/>	CASE NUMBER:

- TO ALL LIVING PARENTS OF MINOR:
 (If petition brought by guardian or dependency attorney appointed as guardian ad litem) TO ALL LIVING GRANDPARENTS OF THE MINOR:

- Petitioner (name of petitioning adult): _____ filed a petition for an order recognizing change of gender and issuance of a new birth certificate for (name of minor): _____
- THE COURT ORDERS that any living parent or, if parents are deceased, grandparent interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition should not be granted. Any person objecting to the recognition of gender change described above must file a written objection that includes the reasons for the objection **at least two court days before the matter is scheduled** to be heard, and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed or, even if filed timely, the objector does not appear on the hearing date, the court may grant the petition without a hearing.

NOTICE OF HEARING

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

TO ALL LIVING PARENTS OF MINOR:

TO ALL INTERESTED PERSONS:

- A petition has been filed seeking change of name from (minor's current name): _____ to (proposed name): _____
- THE COURT ORDERS that any person objecting to the name change described above must file a written objection that includes the reasons for the objection **within six weeks of the date this order is issued**. If no written objection is timely filed, the court will grant the petition without a hearing.

A hearing date may be set only if an objection is timely filed and shows good cause for opposing the name change. Objections based solely on concerns over the petitioner's actual gender identity or gender assigned at birth do not constitute good cause. (See Code Civ. Proc., § 1277.5 (c).)

Date: _____ JUDGE OF THE SUPERIOR COURT

PETITION OF <i>(Name of petitioner or petitioners):</i> <div style="text-align: right;">FOR CHANGE OF NAME</div>	CASE NUMBER:
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DECLARATION OF GUARDIAN OR DEPENDENCY ATTORNEY
Supplemental Attachment to Form NC-500

(Guardians appointed by the Juvenile or Probate courts must fill out all items on this page. Dependency attorneys appointed as guardians ad litem under rules adopted under section 326.5 of Welfare and Institutions Code must fill out only 7a–e.)

7. a. Petitioner *(name)*:
 b. Petitioner's address *(street, city, county, and zip code)*:
 c. Petitioner is the guardian or dependency attorney appointed as guardian ad litem of the following minor, whose name is to be changed:
 (1) Name *(present name of child)*:
 (2) Address *(street, city, county, and zip code)*:
 d. Petitioner was appointed guardian or guardian ad litem of the minor identified in item 7c by *(complete the following)*:
 (1) Superior Court of California, County of *(name)*:
 (2) Department *(check one)*: Juvenile Probate
 (3) Case number *(specify)*:
 (4) Date of appointment *(specify)*:
 e. The grandparents of the minor whose name is to be changed are *(provide, if known)*:
 (1) (grandfather's name): _____ (address): _____
 (2) (grandmother's name): _____ (address): _____
 (3) (grandfather's name): _____ (address): _____
 (4) (grandmother's name): _____ (address): _____
 f. The minor identified in item 7c is likely to remain under the guardian's care until the minor reaches the age of majority because *(explain)*:

 Continued *(If you need additional space, check the box, prepare an Attachment 7f, and attach it to this declaration.)*
 g. The minor identified in item 7c is not likely to be returned to the custody of his or her parents because *(explain)*:

 Continued *(If you need additional space, check the box, prepare an Attachment 7g, and attach it to this declaration.)*
 h. Other relevant information about the guardianship and why the proposed name change is in the best interest of the minor *(specify)*:

 Continued *(If you need additional space, check the box, prepare an Attachment 7h, and attach it to this declaration.)*

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

Guardian of *(name of minor)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>name of each petitioner</i>): <div style="text-align: right;">(BY GUARDIAN or DEPENDENCY ATTORNEY)</div>	
ORDER RECOGNIZING MINOR'S CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE <input type="checkbox"/> and DECREE CHANGING NAME	CASE NUMBER:

1. The petition was duly considered
- a. at the hearing on (*date*): _____ in Courtroom: _____ of the above-entitled court.
 - b. without a hearing.

THE COURT FINDS

2. a. All notices required by law have been given.
- b. The person seeking recognition of a change of gender (*specify present name*):
is a minor.
 - c. The petition was filed on behalf of the minor by a dependency attorney appointed as guardian ad litem pursuant to rules adopted under section 326.5 of Welfare and Institutions Code (*attorney name*):
 - d. The petition was filed on behalf of the minor by the minor's guardian (*name*):
 - (1) The minor is likely to remain in the guardian's care until the age of majority.
 - (2) The minor whose name is to be changed is not likely to be returned to the custody of his or her parents.
 - e. The minor is not is required to register as a sex offender under section 290 of the Penal Code.
This determination was made (*check one*) by using CLETS/CJIS based on information provided to the clerk of the court by a local law enforcement agency.
 - f. No objections to the proposed recognition of gender change were made.
 - g. Objections to the proposed recognition of gender change of name were made by (*name*):
 - h. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient, that the proposed recognition of gender change is in the best interest of the minor, and that the petition should be granted.
 - i. Other findings (*if any*):

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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THE COURT ORDERS

- 3. The gender of the minor (*name*):
 is changed to:
 - a. female.
 - b. male.
 - c. nonbinary.

- 4. A new birth certificate reflecting the change of gender described in item 3 shall be issued.

- 5. If minor was born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the minor as it has been altered.

THE COURT FURTHER ORDERS

- 6. The name of (*present name*):
 is changed to (*new name*):

Date:

JUDGE OF THE SUPERIOR COURT

SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Civil Practice and Procedure: Unlawful Detainer

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Susan 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 19, 2018

Project description from annual agenda: Two bills require changes to unlawful detainer forms:

- Assembly Bill 2413 expands certain affirmative defense in unlawful detainer cases, and mandates that the Judicial Council adopt or revise the UD answer form to reflect this change.
- Assembly Bill 2343 defines the five-day period in which a party must answer an unlawful detainer complaint as excluding Saturday, Sunday and any other judicial holiday. The UD summons must be amended to reflect this change.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W19-04

Title Civil Practice and Procedure: Unlawful Detainer	Action Requested Review and submit comments by February 12, 2019
Proposed Rules, Forms, Standards, or Statutes Revise forms SUM-130 and UD-105	Proposed Effective Date September 1, 2019
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact Susan R. McMullan, 415-865- 7990 susan.mcmullan@jud.ca.gov

Executive Summary and Origin

Recent legislation added to and amended the Code of Civil Procedure section regarding unlawful detainer actions to expand affirmative defenses and to clarify that the period of time in which a defendant must respond to a summons does not include Saturday, Sunday, and other judicial holidays. The Civil and Small Claims Advisory Committee proposes revising two forms, *Answer—Unlawful Detainer* (form UD-105) and *Summons Unlawful Detainer—Eviction* (form SUM-130), to make them consistent with these statutory changes.

The Proposal

***Answer—Unlawful Detainer* (form UD-105)**

Existing Code of Civil Procedure section 1161.3 provides that a landlord cannot terminate a tenancy or fail to renew a tenancy based on acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. The acts must be documented by a temporary restraining order, a protective order, or a copy of a written report by a peace officer that is not more than 180 days old. Assembly Bill 2413 (Chiu; Stats. 2018, ch. 190) amended section 1161.3 to provide an alternative form of documentation that is acceptable: documentation from a qualified third party acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for injuries or abuse resulting from acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. This bill also adds subdivision (f) to section 1161.3 to require the Judicial Council, by September 1, 2019, to

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

“develop a new form or revise an existing form that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful detainer action.” This proposal would revise *Answer—Unlawful Detainer* (form UD-105) to do so.

In addition, AB 2413 added Code of Civil Procedure section 1946.8 to provide that a landlord cannot impose or threaten to impose penalties on a tenant or resident who exercises the right to summon law enforcement or emergency assistance as, or on behalf of, an abuse victim, a crime victim, or an individual in an emergency. (§ 1946.8(c).) Similarly, it provides that a landlord cannot impose or threaten to impose penalties on a tenant or resident as a consequence of someone who is not a resident or tenant summoning law enforcement or emergency assistance in the same circumstances. (*Ibid.*) In an action for unlawful detainer, a tenant, resident, or occupant may raise as an affirmative defense that the landlord violated this provision. (§ 1946.8(f).) This proposal would add that affirmative defense to form UD-150, allowing a tenant or resident to assert that an eviction was due to the tenant or resident summoning assistance on behalf of an abuse or crime victim or person in an emergency.

Form UD-105 is an optional Judicial Council form to be used by a defendant in an unlawful detainer case. Item 3 on the form includes a number of affirmative defenses that can be checked by the defendant before filing the answer. To comply with AB 2413, the Civil and Small Claims Advisory Committee proposes that the form be revised to:

- Add the following underlined text to item 3i:
 - Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant’s household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult (*This defense requires a temporary restraining order, protective order, or police report not more than 180 days old, naming you or your household member as the protected party or victim of these crimes, or documentation from a qualified third party indicating that you or a household member are seeking assistance for injuries or abuse resulting from these acts.*)
- Add new item 3j, which would read as follows:
 - Plaintiff seeks to evict defendant based on defendant or another person summoning law enforcement *assistance* or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

With the addition of new item 3j, the items that follow in item 3 would be relettered.

Summons—Unlawful Detainer—Eviction (form SUM-130)

Assembly Bill 2343 (Chiu; Stats. 2018, ch. 260) amended Code of Civil Procedure section 1167, effective September 1, 2019, to define the five-day period in which a defendant must respond to

an unlawful detainer summons and complaint as excluding Saturday, Sunday, and other judicial holidays. The current summons form, which is a mandatory form, states that a defendant has five *calendar* days, counting Saturday and Sunday, after service of the summons and complaint, to respond.

To make form SUM-130 consistent with SB 2343's amendment to section 1167, it would be revised to state, "You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff." The parenthetical statement about calculating the days would be removed from the form.

Though not required by legislation, other changes would be made to make the form easier to read and comprehend: It would be split into two columns, separating the English and Spanish text; and information about fee waivers, currently in two places, would be put together under the heading "FEE WAIVER." The following language would be added and would appear on the first line: "NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days." This notice appeared on the form at one time and similar notices appear on other summons forms.

The space addressing proof of service and for the court seal, clerk's signature, and notice to the person served have been moved from the first to the second page and placed as the last item on the form. Currently, these appear at the bottom of first page of the form, in between items 3 and 4 (two questions about use of an unlawful detainer assistant), which detract from the flow of the form. Finally, several URLs that are out of date would be corrected.

Note: Except for removing the parenthetical statement about calculating days, the Spanish language part of form SUM-130 has not yet be revised.

Alternatives Considered

Because the revisions are required by legislation and there is little flexibility in how they are made, the advisory committee did not consider any alternatives. The committee believes that changes to the format of form SUM-130, though not required, will make it easier to read.

Fiscal and Operational Impacts

The proposal has no operational impacts on courts. If a court provides hard copies of the forms, some costs will be incurred in replacing the forms due to the statutory changes.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The space addressing proof of service and for the court seal, clerk's signature, and notice to the person served have been moved to the second page and placed as the last item on the form. Should this remain on the first page of the form and, if so, why?

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

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

Attachments and Links

1. Forms SUM-130 and UD-105, at pages 5–8
2. Link A: Assembly Bill 2413, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413
3. Link B: Assembly Bill 2343, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2343

SUMMONS
(CITACION JUDICIAL)

UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

11-27-2018

Not approved by
the Judicial Council

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (www.lawhelpca.org), the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), or by contacting your local court or county bar association.

FEE WAIVER: If you cannot pay the filing fee, ask the clerk for a fee waiver form. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER (número del caso):

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

3. (Must be answered in all cases) An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)** did not did for compensation give advice or assistance with this form. (If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

4. **Unlawful detainer assistant** (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and zip:

- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date) :

Date: _____ Clerk, by _____, Deputy
 (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (form POS-010).)

[SEAL]

5. **NOTICE TO THE PERSON SERVED:** You are served
- a. as an individual defendant.
 - b. as the person sued under the fictitious name of (specify):
 - c. as an occupant
 - d. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> CCP 415.46 (occupant)	<input type="checkbox"/> other (specify):
 - e. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 11-27-2018 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER: _____

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a. Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b. Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):
 Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3f (page 2).)

- a. (Nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. (Nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. (Nonpayment of rent only) On (date): _____ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. Plaintiff waived, changed, or canceled the notice to quit.
- e. Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g. Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): _____
 (Also, briefly state in item 3f the facts showing violation of the ordinance.)
- h. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i. Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires a temporary restraining order, protective order, or police report not more than 180 days old naming you or your household member as the protected party or victim of these crimes, or documentation from a qualified third party indicating that you or a household member are seeking assistance for injuries or abuse resulting from these acts.)

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (cont'd.)

- j. Plaintiff seeks to evict defendant based on defendant or another person summoning law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- k. Other affirmative defenses are stated in item 3l.
- l. Facts supporting affirmative defenses checked above (identify facts for each item by its letter below or on form MC-025):
 - Description of facts is on MC-025, titled as Attachment 3l.

4. OTHER STATEMENTS

- a. Defendant vacated the premises on (date):
- b. The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):
 - Explanation is on MC-025, titled as Attachment 4b.
- c. Other (specify below or on form MC-025 in attachment):
 - Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c. reasonable attorney fees.
- d. that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e. Other (specify below or on form MC-025):
 - All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 64000-6415)

7. (Must be completed in all cases.) An **unlawful detainer assistant** did not did for compensation give advice or assistance with this form. (If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state):

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

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Susan 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 19, 2018

Project description from annual agenda: Senate Bill 1196 provides that a party may petition the court to stop the wrongful use of the party's identity in a business entity filing with the Secretary of State, and mandates that the council adopt an order form that may be filed with the Secretary of State, to be issued if the court determines that a petition is meritorious.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W19-05

Title	Action Requested
Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information	Review and submit comments by February 12, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form CIV-165	September 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov
Hon. Ann I. Jones, Chair	

Executive Summary and Origin

Legislation effective January 1, 2019, authorizes a person who believes that his or her personal identifying information has been used unlawfully in a business entity filing to petition a court for a determination of unlawful use and issuance of an order certifying that determination and ordering specified actions. Senate Bill 1196 (Jackson; Stats. 2018, ch. 696) requires the Judicial Council to develop a form for issuing the order. The Civil and Small Claims Advisory Committee proposes that new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) be used for that purpose.

The Proposal

SB 1196 provides that a party may petition a court to stop the wrongful use of the party's identity in a business entity filing with the Secretary of State and mandates that the council adopt a form that may be filed with the Secretary of State.

SB 1196 adds new Civil Code section 1798.201 to authorize a person who has learned or reasonably suspects that his or her personal identifying information has been used unlawfully¹ in a business entity filing, and who has initiated a law enforcement investigation into the unlawful use, to petition the superior court for an order directing the person who acquired the information with the intent to defraud, if known, and the person using the personal identifying information in

¹ This is defined in Penal Code section 530.5(a) as "any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of [another] person."

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

the business entity filing, to appear at a hearing before the court. The alleged perpetrator and the person using the personal identifying information must show cause for both (1) why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity, and (2) why the personal identifying information should be associated with the business entity. (Civ. Code, § 1798.201(a) & (b).)

SB 1196 also adds new Civil Code section 1798.202, which provides that if the court determines the petition is meritorious and there is no reasonable cause to believe that the victim's personal identifying information has been used lawfully in the business entity filing, the court must make a finding that the victim's personal identifying information has been used unlawfully in the business entity filing and issue an order certifying this determination. Upon making the determination, the court must order that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases.

This proposal recommends the adoption of new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to comply with the requirement of SB 1196. Form CIV-165 would include the findings necessary under new Civil Code section 1798.202 for a judicial determination that the petitioner's personal identifying information was used unlawfully and the action that a judge must order upon such a determination: that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases. The form would require the petitioner to file a certified copy of the order with the Secretary of State. (See Civ. Code, § 1798.202(f).)

Alternatives Considered

The advisory committee considered how to word item 2 on form CIV-165. In stating that the court found no reasonable cause to believe that the petitioner's personal identifying information had been used lawfully, the three alternatives considered were to (1) set out the types of information the court relied on in making the finding, by tracking the language of the statute; (2) state only that the court relied on relevant and reliable information in making its finding; or (3) state only that the court made the finding. Some members were concerned that if the types of information includes police reports, petitioners may attach them or include them when their petitions are filed. This could require a filing under seal. Others noted that police reports and other documents that petitioners might show to judicial officers did not necessarily need to be filed. After discussion of the alternatives, the committee decided to track the language of the statute and is interested in comments on this question.

Fiscal and Operational Impacts

The fiscal and operational impacts of the proposal are limited. This proposal is for a form order that must be filed by the petitioner with the Secretary of State. The authority and procedures for setting and holding a hearing on the petition are required by statute and not created by this proposal.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the language in item 2 include the types of information, as set out in new Civil Code section 1798.202, that the court may have relied on in making its findings?

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

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

Attachments and Links

1. Form CIV-165, at page 4
2. Link A: Senate Bill 1196, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1196

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 (<i>Name</i>): _____	<p><i>FOR COURT USE ONLY</i></p> <p>DRAFT</p> <p>11-27-2018</p> <p>Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITION OF (<i>Name</i>): _____	
ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION	CASE NUMBER: _____

1. The petition of (*name*): _____ under Civil Code section 1798.201 came on for hearing
 on (*date*): _____ at (*time*): _____
 in Dept.: _____

2. THE COURT FINDS, based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court, that the petition is meritorious and there is no reasonable cause to believe that the petitioner's personal identifying information has been used lawfully in the business entity filing. The court finds that the victim's personal identifying information has been used unlawfully in the business entity filing.

3. THE COURT ORDERS that the name and associated personal identifying information in the business entity filing is to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and the name and personal identifying information is to be removed from publicly accessible electronic indexes and databases.

4. For this order to be carried out, the petitioner must file a certified copy of this order with the Secretary of State.

Date: _____

JUDICIAL OFFICER

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Civil Practice and Procedure: Waivers of Court Fees for Court Reporters and Interpreters

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 19, 2018

Project description from annual agenda: Amend fee waiver rules and revise forms to reflect recent decision by California Supreme Court in Jameson v. Desta that an indigent party has the right to a court reporter if requested.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W19-06

<p>Title Civil Practice and Procedure: Waivers of Court Fees for Court Reporters and Interpreters</p> <p>Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rules 2.956 and 3.55; revise forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, and FW-012-GC</p> <p>Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair</p>	<p>Action Requested Review and submit comments by February 12, 2019</p> <p>Proposed Effective Date September 1, 2019</p> <p>Contact Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov</p>
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Executive Summary and Origin

Recent changes in the law pertaining to court fees for providing court reporters, providing court interpreters to parties in civil cases by priority level, and reimbursing courts for the cost of providing interpreters affect certain rules and forms that address fee waivers. The California Supreme Court recently held that courts that do not provide official court reporters must make available to parties entitled to a waiver of fees court reporters or other means to create a verbatim record. (*Jameson v. Desta* (2018) 5 Cal.5th 594.) Earlier legislation (Assem. Bill 1657; Stats. 2014, ch. 721) added a section to the Evidence Code that requires the Judicial Council to reimburse courts for court interpreter services for parties in civil cases and prioritizes by case type the provision of court interpreter services.

The Civil and Small Claims Advisory Committee proposes that two California Rules of Court be amended and several fee waiver forms be revised to provide, generally, that a party that has been granted a fee waiver may request a court to provide an official reporter at a proceeding; delete an item addressing court-appointed interpreters in small claims actions; and change the language addressing court reporter's fees.

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

Background

Official court reporters for fee waiver recipients

Jameson v. Desta (2018) 5 Cal.5th 594 (*Jameson*) involved a plaintiff who had been granted a fee waiver under Government Code section 68631. Such a litigant is entitled to a waiver of court fees for the attendance of an official court reporter at a court proceeding (Gov. Code, § 68086(b).) In *Jameson*, however, the plaintiff was not provided a court reporter at his civil trial because the Superior Court of San Diego County, as a result of a reduction in its budget, had adopted a policy under which no official court reporters were provided at most civil trials, even for persons who qualified for a fee waiver. Under the policy, a party could hire and pay for a private court reporter. (*Jameson*, at p. 598.) It was undisputed that if an official court reporter had been made available for the trial in this case, the plaintiff would have been entitled to the court reporter's attendance at the trial without the payment of a fee. (*Id.* at p. 600.) The court concluded that the superior court policy was inconsistent with prior in forma pauperis judicial decisions and with the public policy of facilitating equal access to the courts. (*Id.* at p. 599.) It stated:

[I]n order to satisfy the principles underlying California's in forma pauperis doctrine and embodied in the legislative public policy set forth in [Government Code] section 68630, subdivision (a), when a superior court adopts a general policy under which official court reporters are not made available in civil cases but parties who can afford to pay for a private court reporter are permitted to do so, the superior court must include in its policy an exception for fee waiver recipients that assures such litigants the availability of a verbatim record of the trial court proceedings, which under current statutes would require the presence of an official court reporter.

(*Jameson*, at p. 623.)

Court-appointed interpreters and fee waiver recipients

Assembly Bill 1657 added section 756 to the Evidence Code to require the Judicial Council to reimburse courts for court interpreter services "provided in civil actions and proceedings to any party who is present in court and who does not proficiently speak or understand the English language." It further provides, "If sufficient funds are not appropriated to provide an interpreter to every party that meets the standard of eligibility, court interpreter services in civil cases reimbursed by the Judicial Council ... shall be prioritized by case type by each court." The statute provides eight different case-type priority levels, placing "[a]ll other civil actions or proceedings" (which encompasses small claims cases) as the eighth priority and provides that preference must be given to parties who have been granted fee waivers in certain case types, including all other civil actions or proceedings.

The Proposal

As a result of *Jameson* and recent legislation, rules 2.956 and 3.55 must be amended and various fee waiver forms must be revised to conform to the law.

Rule 2.956

Rule 2.956(c), on court reporting services in civil cases, provides that if the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange for a certified shorthand reporter to serve as an official pro tempore reporter. It further provides that the party must pay the reporter's fee. Subdivision (c) of rule 2.956 would be amended to add a new subdivision (c)(2) that provides that if a party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, a party may request that the court provide an official reporter. Rule 2.956(c)(2) would read:

[If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may:] [¶] ... [¶] (2) In compliance with any local court rules, request that the court provide an official reporter for attendance at the proceeding, if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial.

Rule 3.55

Rule 3.55 lists the court fees and costs that must be waived upon the granting of an application for an initial fee waiver. The court in *Jameson* discussed subdivision (7) of rule 3.55 and the rule's advisory committee comment. The rule currently reads, in part:

Court fees and costs that must be waived upon granting an application for an initial fee waiver include: [¶] ... [¶] (7) Reporter's fees for attendance at hearings and trials, if the reporter is provided by the court.

The accompanying advisory committee comment currently provides as follows:

The inclusion of court reporter's fees in the fees waived upon granting an application for an initial fee waiver is not intended to mandate that a court reporter be provided for all fee waiver recipients. Rather, it is intended to include within a waiver all fees mandated under the Government Code for the cost of court reporting services provided by a court.

The *Jameson* court concluded that rule 3.55(7) and its advisory committee comment should not be interpreted as addressing the issue before it—whether a general superior court policy, like the San Diego superior court policy at issue in the case, is compatible with the general principles embodied in past California in forma pauperis decisions and the legislative policy embodied in Government Code section 68630(a). (*Jameson, supra*, 5 Cal.5th at p. 618.) It reached this conclusion because rule 3.55(7), by its language, does not purport to address when a trial court is *required* to provide an official court reporter to prepare a verbatim record of the court proceedings. (*Jameson, supra*, at p. 618.)

Despite the *Jameson* court’s conclusion that rule 3.55 and its advisory committee comment do not address the issue of whether a trial court policy that does not provide official court reporters, but permits parties to retain reporters at their own cost, is consistent with court precedent and policies on access to justice, the advisory committee recommends the following amendments to the rule:

- Eliminate the phrase “if the reporter is provided by the court” in subdivision (7); and
- Change the current advisory committee comment as follows: “The inclusion of court reporter’s fees in the fees waived upon granting an application for an initial fee waiver is not intended to ~~mandate that a court reporter be provided for all fee waiver recipients~~ expand the use of court reporters in case types and proceedings in which an official court reporter is not currently required to make the official record of the proceedings. Rather, it is intended to include within a waiver all fees mandated under the Government Code for the cost of court reporting services provided by a court.”

These amendments are proposed to eliminate any ability to interpret the rule as not requiring a court to provide an official reporter (if the court is not electronically recording the hearing or trial) when requested by a party granted a fee waiver. The proposed additional language would specify that the amendment does not require courts to provide official court reporters in case types in which they are not currently required for purposes of making the official record of the proceedings.¹

Fee waiver forms

Various fee waiver forms include “reporter’s fee for attendance at hearing or trial, if reporter provided by the court” among the items for which all or part of the fees are waived for a fee waiver recipient. Because, under *Jameson*, a court must provide a court reporter (unless the proceedings are electronically recorded) to fee waiver recipients, the forms would be revised to replace the existing language about reporter’s fees with “reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter.”

This revision would be made to the following forms:

1. *Information Sheet on Waiver of Superior Court Fees and Costs* (FW-001-INFO) (item 1);
2. *Order on Court Fee Waiver (Superior Court)* (FW-003) (item 4);
3. *Order on Court Fee Waiver (Superior Court) (Ward or Conservatee)* (FW-003-GC) (item 6);

¹ In non-criminal cases, courts are required to provide official reporters in only juvenile and involuntary civil commitment proceedings. In other case types, including unlimited civil, most family law, and probate matters, most courts are not required to provide an official court reporter, but a party may arrange and pay for reporter. (*Report to the Chief Justice: Commission on the Future of California’s Court System*, p. 238 (2017), www.courts.ca.gov/documents/futures-commission-final-report.pdf.) Trial courts may use electronic recording to make an official court record in only limited civil, misdemeanor, and infraction cases. (Gov. Code, § 69957(a).)

4. *Notice: Waiver of Court Fees (Superior Court)* (FW-005) (item 4);
5. *Notice: Waiver of Court Fees (Superior Court) (Ward or Conservatee)* (FW-005-GC) (item 6);
6. *Order on Court Fee Waiver After Hearing (Superior Court)* (FW-008) (item 5);
7. *Order on Court Fee Waiver After Hearing (Superior Court) (Ward or Conservatee)* (FW-008-GC) (item 7);
8. *Order on Court Fee Waiver After Reconsideration Hearing (Superior Court)* (FW-012) (item 6); and
9. *Order on Court Fee Waiver After Reconsideration Hearing (Superior Court) (Ward or Conservatee)* (FW-012-GC) (item 8d(2)).

These fee waiver forms list also “court-appointed interpreter in small claims court” as an item for which all or part of the fees are waived for a party granted a fee waiver. This was placed on the forms to specifically recognize that small claims courts were authorized to appoint an interpreter at public expense to a non-English-speaking litigant who qualified for a fee waiver. (See *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412.) Today, however, the reference to interpreters only “in small claims court” is confusing. Based on the changes made by AB 1657, all courts in civil proceedings, regardless of the type of proceeding or whether the party has been granted a fee waiver, may appoint an interpreter when needed by a limited English proficient party, using the case-type priority levels in Evidence Code section 756. This proposal would therefore remove text relating to a waiver of fees for a court-appointed interpreter in small claims court from the following forms:

1. FW-001-INFO (“Having a court-appointed interpreter in small claims court” in item 1);
2. FW-003 (“Court-appointed interpreter in small claims court” in item 4);
3. FW-003-GC (“Court-appointed interpreter in small claims court” in item 6);
4. FW-005 (“Court-appointed interpreter in small claims court” in item 4);
5. FW-005-GC (“Court-appointed interpreter in small claims court” in item 6);
6. FW-008 (“Court-appointed interpreter in small claims court” in item 5);
7. FW-008-GC (“Court-appointed interpreter in small claims court” in item 7);
8. FW-012 (“Court-appointed interpreter” in item 6d(2)); and
9. FW-012-GC (“Court-appointed interpreter” in item 8d(2)).

Alternatives Considered

The advisory committee considered how best to amend the rule text to reflect the holding in *Jameson*. The committee did not consider alternatives to amending the rule and revising the forms because of the importance of these changes—some are needed to conform to the law and others are useful to implement statutory changes and to avoid confusion.

Fiscal and Operational Impacts

This proposal’s fiscal and operational impacts on courts result from clarifications to and changes in the law. The proposal implements those changes. It is likely that some training of court staff will be necessary. The cost to courts of providing court reporters for fee waiver recipients is

unknown but may be significant. Some costs will result from the need to replace outdated forms if the court provides paper copies of forms.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would it be helpful to have a uniform statewide procedure for a party to request a court reporter?
- Should rule 3.55, on court fees and costs included in all initial fee waivers, be amended to include court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 2.956 and 3.55, at pages 7–8
2. Forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, FW-012-GC, at pages 9–29

Rules 2.956 and 3.55 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 2.956. Court reporting services in civil cases**

2
3 **(a) Statutory reference; application**

4
5 This rule is adopted solely to effectuate the statutory mandate of Government Code
6 sections 68086(a)–(b) and must be applied so as to give effect to these sections. It
7 applies to trial courts.

8
9 **(b) * * ***

10
11 **(c) Party may procure reporter or request reporter if granted fee waiver**

12
13 If the services of an official court reporter are not available for a hearing or trial in
14 a civil case, a party may:

- 15
16 (1) Arrange for the presence of a certified shorthand reporter to serve as an
17 official pro tempore reporter. It is that party's responsibility to pay the
18 reporter's fee for attendance at the proceedings, but the expense may be
19 recoverable as part of the costs, as provided by law; or
20
21 (2) In compliance with any local court rules, request that the court provide an
22 official reporter for attendance at the proceedings, if the party has been
23 granted a fee waiver and if the court is not electronically recording the hearing
24 or trial.

25
26
27 **Rule 3.55. Court fees and costs included in all initial fee waivers**

28
29 Court fees and costs that must be waived upon granting an application for an initial fee
30 waiver include:

31
32 ~~(1)-(4)~~ * * *

33
34 ~~(5) Court-appointed interpreter's fees for parties in small claims actions;~~

35
36 ~~(6)(5)~~ * * *

37 ~~(7)(6)~~ Reporter's fees for attendance at hearings and trials, if the reporter is provided by
38 the court;

39
40 ~~(8)-(11)(7)-(10)~~ * * *

Advisory Committee Comment

1
2
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8

The inclusion of court reporter’s fees in the fees waived upon granting an application for an initial fee waiver is not intended to ~~mandate that a court reporter be provided for all fee waiver recipients~~ expand the use of court reporters in proceedings in which an official court reporter is not currently required. Rather, it is intended to include within a waiver all fees mandated under the Government Code for the cost of court reporting services provided by a court.

INFORMATION SHEET ON WAIVER OF SUPERIOR COURT FEES AND COSTS

If you have been sued or if you wish to sue someone, if you are filing or have received a family law petition, or if you are asking the court to appoint a guardian for a minor or a conservator for an adult or are an appointed guardian or conservator, and if you (or your ward or conservatee) cannot afford to pay court fees and costs, you may not have to pay them in order to go to court. If you (or your ward or conservatee) are getting public benefits, are a low-income person, or do not have enough income to pay for your (or his or her) household's basic needs *and* your court fees, you may ask the court to waive all or part of those fees.

1. To make a request to the court to waive your fees in superior court, complete the *Request to Waive Court Fees* (form FW-001) or, if you are petitioning for the appointment of a guardian or conservator or are an appointed guardian or conservator, complete the *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you qualify, the court will waive all or part of its fees for the following:
 - Filing papers in superior court (other than for an appeal in a case with a value of over \$25,000)
 - Making and certifying copies
 - Sheriff's fee to give notice
 - Court fee for telephone hearing
 - Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
 - Assessment for court investigations under Probate Code section 1513, 1826, or 1851
 - Preparing, certifying, copying, and sending the clerk's transcript on appeal
 - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.833 or 8.834
 - Making a transcript or copy of an official electronic recording under rule 8.835
 - Giving notice and certificates
 - Sending papers to another court department

2. You may ask the court to waive other court fees during your case in superior court as well. To do that, complete a *Request to Waive Additional Court Fees (Superior Court)* (form FW-002) or *Request to Waive Additional Court Fees (Superior Court) (Ward or Conservatee)* (form FW-002-GC). The court will consider waiving fees for items such as the following, or other court services you need for your case:
 - Jury fees and expenses
 - Fees for court-appointed experts
 - Other necessary court fees
 - Fees for a peace officer to testify in court
 - Court-appointed interpreter fees for a witness

3. If you want the Appellate Division of the Superior Court or the Court of Appeal to review an order or judgment against you and you want the court fees waived, ask for and follow the instructions on *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO).

IMPORTANT INFORMATION!

- **You are signing your request under penalty of perjury. Answer truthfully, accurately, and completely.**
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability, or the ability of your ward or conservatee, to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you or your ward or conservatee are granted may be ended if you do not go to court when asked. You or your ward's or conservatee's estate may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **Public benefits programs listed on the application form.** In item 5 on the *Request to Waive Court Fees (item 8 of the Request to Waive Court Fees (Ward or Conservatee))*, there is a list of programs from which you (or your ward or conservatee) may be receiving benefits, listed by the abbreviations they are commonly known by. The full names of those programs can be found in Government Code section 68632(a), and are also listed here:
 - Medi-Cal
 - Food Stamps—California Food Assistance Program, CalFresh Program, or SNAP
 - SSP—State Supplemental Payment
 - Supp. Sec. Inc.—Supplemental Security Income (not Social Security)
 - County Relief/Gen. Assist.—County Relief, General Relief (GR), or General Assistance (GA)

- IHSS—In-Home Supportive Services
- CalWORKs—California Work Opportunity and Responsibility to Kids Act
- Tribal TANF—Tribal Temporary Assistance for Needy Families
- CAPI—Cash Assistance Program for Aged, Blind, or Disabled Legal Immigrants

• **If you receive a fee waiver, you must tell the court if there is a change in your finances, or the finances of your ward or conservatee.** You must tell the court within five days if those finances improve or if you, or your ward or conservatee, become able to pay court fees or costs during this case. (File *Notice to Court of Improved Financial Situation or Settlement* (form FW-010) or *Notice to Court of Improved Financial Situation or Settlement (Ward or Conservatee)* (form FW-010-GC) with the court.) You may be ordered to repay any amounts that were waived after your eligibility, or the eligibility of your ward or conservatee, came to an end.

• **If you receive a judgment or support order in a family law matter:** You may be ordered to pay all or part of your waived fees and costs if the court finds your circumstances have changed so that you can afford to pay. You will have the opportunity to ask the court for a hearing if the court makes such a decision.

• **If you win your case in the trial court:** In most circumstances the other side will be ordered to pay your waived fees and costs to the court. The court will not enter a satisfaction of judgment until the court is paid. (This does not apply in unlawful detainer cases. Special rules apply in family law cases and in guardianships and conservatorships. (Gov. Code, § section 68637(d), (e); Cal. Rules of Court, rule 7.5).)

• **If you settle your civil case for \$10,000 or more:** Any trial court-waived fees and costs must first be paid to the court out of the settlement. **The court will have a lien on the settlement in the amount of the waived fees and costs.** The court may refuse to dismiss the case until the lien is satisfied. A request to dismiss the case (use form CIV-110) must have a declaration under penalty of perjury that the waived fees and costs have been paid. Special rules apply to family law cases.

• **The court can collect fees and costs due the court.** If waived fees and costs are ordered paid to the trial court, or if you fail to make the payments over time, the court can start collection proceedings and add a \$25 fee plus any additional costs of collection to the other fees and costs owed to the court.

• **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or earlier if a court finds that you or your ward or conservatee are not eligible for a fee waiver. If the case is a guardianship or conservatorship proceeding, see California Rules of Court, rule 7.5(k) for information on the final disposition of that matter.

• **If you are in jail or state prison:** Prisoners may be required to pay the full cost of the filing fee in the trial court but may be allowed to do so over time. See Government Code section 68635.

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

- ① **Person who asked the court to waive court fees:**
Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
- ② **Lawyer, if person in ① has one** (name, address, phone number, e-mail, and State Bar number): _____

- ③ A request to waive court fees was filed on (date): _____
 The court made a previous fee waiver order in this case on (date): _____

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

- ④ After reviewing your: *Request to Waive Court Fees* *Request to Waive Additional Court Fees*
the court makes the following orders:
 - a. The court **grants** your request, as follows:
 - (1) **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. (*Cal. Rules of Court, rules 3.55 and 8.818.*) You do not have to pay the court fees for the following:
 - Filing papers in Superior Court
 - Making copies and certifying copies
 - Sheriff’s fee to give notice
 - Reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
 - Assessment for court investigations under Probate Code section 1513, 1826, or 1851
 - Preparing, certifying, copying, and sending the clerk’s transcript on appeal
 - Holding in trust the deposit for a reporter’s transcript on appeal under rule 8.130 or 8.834
 - Making a transcript or copy of an official electronic recording under rule 8.835
 - (2) **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. (*Cal. Rules of Court, rule 3.56.*) You do not have to pay for the checked items.
 - Jury fees and expenses
 - Fees for court-appointed experts
 - Other (specify): _____
 - Court fee for phone hearing
 - Giving notice and certificates
 - Sending papers to another court department
 - Fees for a peace officer to testify in court
 - Court-appointed interpreter fees for a witness

Case Number: _____

Your name: _____

b. The court **denies** your fee waiver request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the items listed below (*specify incomplete items*):

(2) The court **denies** your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested (*specify reasons*): _____

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c below, or
- Ask for a hearing in order to show the court more information. (*Use form FW-006 to request hearing.*)

c. The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about (*specify questions regarding eligibility*): _____

Bring the following proof to support your request if reasonably available: _____

Name and address of court if different from above:

Hearing Date

Date: _____ Time: _____

Dept.: _____ Room: _____

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: _____

Signature of (check one): Judicial Officer Clerk, Deputy



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): A certificate of mailing is attached.

I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from (*city*): _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:

Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

2 Lawyer, if person in 1 has one:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

3 (Proposed) ward or conservatee:

Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

4 Lawyer for (proposed) ward or conservatee, if any:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

5 A request to waive court fees was filed on (date): _____

The court made a previous fee waiver order in this case on (date): _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about the ward's or conservatee's finances after granting a waiver and may later order payment of the waived fees from his or her estate. If this happens and the fees are not paid, the court can also charge collection fees. The court may also direct you to make efforts to collect money to pay back waived fees from persons who owe a duty to support the ward or conservatee. If there is a change in the ward's or conservatee's financial circumstances during this case that increases his or her ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010-GC.)

If this case is an action against another party and you win the case on behalf of the ward or conservatee, the trial court may order the other side to pay some or all of the waived fees. If you settle the matter for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

The court may also have a lien against the ward's or conservatee's estate that must be paid before the estate is distributed, the guardianship or conservatorship proceeding is concluded, and you are discharged as guardian or conservator.

**6 After reviewing your: Request to Waive Court Fees Request to Waive Additional Court Fees
the court makes the following orders:**

a. The court **grants** your request concerning the ward's or conservatee's court fees and costs, as follows:

(1) **Fee Waiver.** The court grants your request and waives the fees and costs listed below.
(*Cal. Rules of Court, rules 3.55 and 8.818.*) You do not have to pay the court fees for the following:

- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone hearing
- Giving notice and certificates
- Sending papers to another court department

(*List continued on next page.*)



Name of (Proposed) Ward or Conservatee:

Case Number:

- 6 a. (1) • Reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
 - Preparing, certifying, copying, and sending the clerk’s transcript on appeal
 - Holding in trust the deposit for a reporter’s transcript on appeal under rule 8.130 or 8.834
 - Making a transcript or copy of an official electronic recording under rule 8.835
- (2) **Additional Fee Waiver.** The court grants your request and waives the additional superior court fees and costs that are checked below. (*Cal. Rules of Court, rule 3.56.*) You do not have to pay for the checked items.
- | | |
|-----------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Jury fees and expenses | <input type="checkbox"/> Fees for a peace officer to testify in court |
| <input type="checkbox"/> Fees for court-appointed experts | <input type="checkbox"/> Court-appointed interpreter fees for a witness |
| <input type="checkbox"/> Other (<i>specify</i>): _____ | |

b. The court **denies** your fee waiver request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

- (1) The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:
- Pay the ward’s or conservatee’s fees and costs, or
 - File a new revised request that includes the items listed below (*specify incomplete items*):

- (2) The court **denies** your request because the information you provided on the request shows that the ward or conservatee is not eligible for the fee waiver you requested (*specify reasons*):

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Ward or Conservatee)(Superior Court)*, form FW-006-GC. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay the fees and costs in full or the amount listed in c below, or
- Ask for a hearing in order to show the court more information. (*Use form FW-006-GC to request hearing.*)

c. The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about (*specify questions regarding eligibility*):

Bring the following proof to support your request if reasonably available:




Name of (Proposed) Ward or Conservatee:

Case Number:

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay the ward's or conservatee's fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

NOTE TO GUARDIAN or CONSERVATOR: If there are unpaid court fees after a denial of a request for a fee waiver, your case—including the guardianship or conservatorship proceeding if the waiver is requested in that matter—might not go forward. After a denial, you may choose to advance the court costs yourself to ensure that the case proceeds. If you or another person is appointed as guardian or conservator, you would have an opportunity to be reimbursed for such advances from the assets of the guardianship or conservatorship estate, if any, as allowable expenses of administration. You might also have the right to reimbursement for advanced court costs from persons with an obligation to support the ward or conservatee from assets not part of his or her estate, such as a parent of the ward, the spouse or registered domestic partner of the conservatee who is managing the couple's community property outside the conservatorship estate, or the trustee of a trust of which the conservatee is a beneficiary.

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

Date: _____



Signature of (check one): Judicial Officer Clerk, Deputy



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and (check one): A certificate of mailing is attached.

I handed a copy of this order to the party and attorney, if any, listed in ①, ②, and ④ at the court, on the date below.

This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ①, ②, and ④, from (city): _____, California, on the date below.

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

**Notice: Waiver of Court Fees
(Superior Court)**

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

1 **Person who asked the court to waive court fees:**
Name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____
Phone number: _____

2 Lawyer, if person in **1** has one: *(name, address, phone number, e-mail, and State Bar number):*

3 Your *Request to Waive Court Fees* was filed on *(date)*:

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

4 Your request is **granted** by operation of law because no court action was taken within five days after it was filed. A fee waiver is granted for the following court fees and costs (*Cal. Rules of Court, rule 3.55*):

- Filing papers
- Giving notice and certificates
- Sending papers to another court department
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rules 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone hearing

Date: _____ Clerk, by _____, Deputy

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one)*: A certificate of mailing is attached.
 I handed a copy of this notice to the party and attorney, if any, listed in **1** and **2**, at the court, on the date below.
 This notice was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in **1** and **2**, from *(city)*: _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:

Name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

2 Lawyer, if person in 1 has one:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

Fill in court name and street address:

Superior Court of California, County of

3 (Proposed) ward or conservatee:

Name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

Court fills in case number when form is filed.

Case Number:

Case Name:

4 Lawyer for (proposed) ward or conservatee, if any:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

5 Your *Request to Waive Court Fees* was filed on (date): _____

6 Your request is **granted** by operation of law because no court action was taken within five days after it was filed. A fee waiver is granted for the following court fees and costs (*Cal. Rules of Court, rule 3.55*):

- Filing papers
- Giving notice and certificates
- Sending papers to another court department
- Court fee for phone hearing
- Making copies and certifying copies
- Sheriff's fee to give notice
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rules 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835

Read Notice to (Proposed) Guardian or Conservator on page 2.

Date: _____ Clerk, by _____, Deputy

Name of (Proposed) Ward or Conservatee:

Case Number:

Notice to (Proposed) Guardian or Conservator: The court may order you to answer questions about the (proposed) ward's or conservatee's finances and order payment of the waived fees from his or her estate. If this happens and the fees are not paid, the court can also charge collection fees. The court may also order you make efforts to collect money for the waived fees from those owing a duty of support of the ward or conservatee.

If there is a change in the ward's or conservatee's financial circumstances during this case that increases his or her ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010-GC.)

If this case is a civil case against another party and you win the case on behalf of the ward or conservatee, the trial court may order the other side to pay the fees. If you settle the civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

The court may also have a lien against the ward's or conservatee's estate that must be paid before the estate is distributed, the guardianship or conservatorship proceeding is concluded, and you are discharged as guardian or conservator.

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): A certificate of mailing is attached.

I handed a copy of this notice to the party and attorney(s), if any, listed in ①, ②, and ④, at the court, on the date below.

This notice was mailed first class, postage paid, to the party and attorney(s), if any, at the addresses listed in ①, ②, and ④, from (*city*): _____, California, on the date below.

Date: _____

Clerk, by _____, Deputy

Order on Court Fee Waiver After Hearing (Superior Court)

Clerk stamps date here when form is filed.

DRAFT

12-03-2018

Not approved by the Judicial Council

1 Person who asked the court to waive court fees:
Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____

2 Lawyer, if person in 1 has one (name, address, phone number, e-mail, and State Bar number):

3 A request to waive court fees was filed (date): _____

4 There was a hearing on (date): _____
at (time): _____ **in (Department):** _____

The following people were at the hearing (check all that apply):
 Person in **1** Lawyer in **2**
 Others (names): _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

5 After reviewing your: Request to Waive Court Fees Request to Waive Additional Court Fees
the court makes the following order:

- a. The court **grants** your request and waives your court fees and costs as follows:
 - (1) **Fee Waiver.** The court **grants** your request and waives your court fees and costs listed below (*Cal. Rules of Court, rules 3.55 and 8.818.*) You do not have to pay the court fees for the following:
 - Filing papers in superior court
 - Making copies and certifying copies
 - Sheriff's fee to give notice
 - Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
 - Assessment for court investigations under Probate Code section 1513, 1826, or 1851
 - Preparing and certifying the clerk's transcript on appeal
 - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
 - Making a transcript or copy of an official electronic recorder under rule 8.835
 - Giving notice and certificates
 - Sending papers to another court department
 - Court fees for phone hearing
 - (2) **Additional Fee Waiver.** The court **grants** your request and waives your additional superior court fees and costs that are checked below. (*Cal. Rules of Court, rule 3.56.*) You do not have to pay for the checked items.
 - Jury fees and expenses
 - Fees for court-appointed experts
 - Other: (*specify*): _____
 - Fees for a peace officer to testify in court
 - Court-appointed interpreter fees for a witness



Case Name: _____	Case Number: _____
-------------------------	---------------------------

- b. The court **denies** your request and **will not waive or reduce** your fees and costs.
- (1) The reason for this denial is as follows:
- (a) Your request is incomplete, and you did not provide the information that the court requested (*specify items missing*): _____
- (b) You did not go to court on the hearing date to provide the information the court needed to make a decision.
- (c) The information you provide shows that you are not eligible for the fee waiver you requested because (*check all that apply*):
- i. Your income is too high.
- ii. Other (*explain*): _____
- (d) There is not enough evidence to support a fee waiver.
- (e) Other (*state reasons*): _____

- (2) You may pay some court fees and costs over time. You must make monthly payments of \$ _____ beginning (*date*): _____ and then payable on the 1st of each month after that, until the fees checked below are paid in full.
- Filing fees
- Other (*specify*): _____

You must pay all other court fees and costs as they are due.

- c. The court **partially grants** your request so you can pay court fees without using money you need to pay for your household's basic needs. You are ordered to pay a portion of your fees, **as checked below**. The court only partially grants the request because (*state reasons for partial denial*): _____

- (1) You must pay _____ % of your court fees.
- (2) The court waives some fees. The fees checked below are waived. You must pay all other court fees.
- | | |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Filing papers at superior court | <input type="checkbox"/> Giving notice and certificates |
| <input type="checkbox"/> Sheriff's fee to give notice | <input type="checkbox"/> Sending papers to another court department |
| <input type="checkbox"/> Court-appointed interpreter | <input type="checkbox"/> Court-appointed interpreter fees for a witness |
| <input type="checkbox"/> Jury fees and expenses | <input type="checkbox"/> Fees for a peace officer to testify in court |
| <input type="checkbox"/> Court-appointed experts' fees | <input type="checkbox"/> Court fees for telephone hearings |
| <input type="checkbox"/> Making certified copies | |
| <input type="checkbox"/> Reporter's fee for attendance at trial or hearing if reporter provided by the court | |
| <input type="checkbox"/> Other (<i>specify</i>): _____ | |
- (3) Other (*specify*): _____

Warning! If b or c above are checked: You have **10 days** after the clerk gives notice of this order (see date below) to pay your fees as ordered, unless there is a later date for beginning payments in item b(2). If you do not pay, your court papers will not be processed. If the papers are a notice of appeal, your appeal may be dismissed.

Date: _____ ▶

Signature of Judicial Officer

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): A certificate of mailing is attached.

I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from (*city*): _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:

Name: _____
Street or mailing address: _____
City: _____ State: ____ Zip: _____
Telephone: _____

2 Lawyer, if person in 1 has one:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: ____ Zip: _____
E-mail: _____ Telephone: _____

3 (Proposed) ward or conservatee:

Name: _____
Street or mailing address: _____
City: _____ State: ____ Zip: _____
Telephone: _____

4 Lawyer for (proposed) ward or conservatee, if any:

Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: ____ Zip: _____
E-mail: _____ Telephone: _____

5 A request to waive court fees was filed on (date): _____

6 There was a hearing on (date): _____
at (time): _____ in (Department): _____

The following people were at the hearing (check all that apply):

- Person in 1 Lawyer in 2 Person in 3 Lawyer in 4
 Others (names): _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about the ward's or conservatee's finances after granting a waiver and may order payment of the waived fees from his or her estate. If this happens and the fees are not paid, the court can also charge collection fees. The court may also direct you to make efforts to collect money to pay back waived fees from persons who owe a duty to support the ward or conservatee. If there is a change in the ward's or conservatee's financial circumstances during this case that increases his or her ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010-GC.)

If this case is an action against another party and you win the case on behalf of the ward or conservatee, the trial court may order the other side to pay some or all of the waived fees. If you settle the matter for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

The court may also have a lien against the ward's or conservatee's estate that must be paid before the estate is distributed, the guardianship or conservatorship proceeding is concluded, and you are discharged as guardian or conservator.



Name of (Proposed) Ward or Conservatee:

Case Number:

7 After reviewing your (check one): Request to Waive Court Fees Request to Waive Additional Court Fees
the court makes the following order:

a. The court **grants** your request and waives the ward's or conservatee's court fees and costs as follows:

(1) **Fee Waiver.** The court **grants** your request and waives the court fees and costs listed below (*Cal. Rules of Court, rules 3.55 and 8.818.*) You do not have to pay the court fees for the following:

- Filing papers in superior court
- Making copies and certifying copies
- Sending papers to another court department
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing and certifying the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recorder under rule 8.835
- Court fees for phone hearing
- Sheriff's fee to give notice
- Giving notice and certificates

(2) **Additional Fee Waiver.** The court **grants** your request and waives the additional superior court fees and costs that are checked below. (*Cal. Rules of Court, rule 3.56.*) You do not have to pay for the checked items.

- Jury fees and expenses
- Fees for court-appointed experts
- Other (specify): _____
- Fees for a peace officer to testify in court
- Court-appointed interpreter fees for a witness

b. The court **denies** your request and **will not waive or reduce** the ward's or conservatee's fees and costs.

(1) The reason for this denial is as follows:

(a) Your request is incomplete, and you did not provide the information that the court requested (*specify items missing*):

(b) You did not go to court on the hearing date to provide the information the court needed to make a decision.

(c) The information you provide shows ineligibility for the fee waiver you requested because (*check all that apply*):

i. The ward's or conservatee's income is too high.

ii. Other (*explain*): _____

(d) There is not enough evidence to support a fee waiver.

(e) Other (*state reasons*): _____

(2) You may pay the initial filing fee over time. You must make monthly payments of at least \$ _____ beginning (*date*): _____ and then payable on the 1st of each month after that, until the fees checked below are paid in full.

Filing fees.

Other (*describe*): _____

You must pay all other court fees and costs as they are due.



Name of (Proposed) Ward or Conservatee:

Case Number:

- 7 c. The court **partially grants** your request so you can pay, from the estate of the ward or conservatee or from funds from persons or entities with a duty to support the ward or conservatee, court fees without using money needed to pay for the ward's or conservatee's household's basic needs. You are ordered to pay a portion of the ward's or conservatee's fees, **as checked in items c (1) and (2) below**.

The court only partially grants the request because *(state reasons for denial)*:

- (1) You must pay _____ % of the ward's or conservatee's court fees.
 (2) The court waives some fees. The fees checked below are waived. You must pay all other court fees.

- Filing papers at superior court
- Sheriff's fee to give notice
- Court-appointed interpreter
- Reporter's fee for attendance at trial or hearing if reporter provided by the court
- Jury fees and expenses
- Court-appointed experts' fees
- Making certified copies
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter fees for a witness
- Fees for a peace officer to testify in court
- Court fees for telephone hearings
- Other *(specify)*: _____

- (3) Other *(specify)*:

Warning! If item 7b or 7c above is checked: You have **10 days** after the clerk gives notice of this order (see date below) to pay your fees as ordered, unless there is a later date for beginning payments in item 7b(2). If you do not pay, your court papers will not be processed. If the papers are a notice of appeal, your appeal may be dismissed.

Date: _____

Signature of Judicial Officer

Clerk's Certificate of Service

- I certify that I am not involved in this case and *(check one)*: A certificate of mailing is attached.
 I handed a copy of this order to the party and attorney(s), if any, listed in ①, ②, and ④, at the court, on the date below.
 This order was mailed first class, postage paid, to the party and attorney(s), if any, at the addresses listed in ①, ②, and ④, from *(city)*: _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

Clerk stamps date here when form is filed.

DRAFT

11-29-2018

**Not approved by
the Judicial Council**

① Name of person who asked the court to waive court fees: _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

② Lawyer, if person in ① has one: *(name, address, phone number, e-mail, and State Bar number)*:

Fill in court name and street address:

Superior Court of California, County of

③ The court made a previous fee waiver order in this case on *(date)*:

④ The court sent you a notice to go to court about your fee waiver on *(date)*:

Court fills in case number when form is filed.

Case Number:

Read this form carefully. All checked boxes are court orders.

Case Name:

⑤ There was a hearing on *(date)*: _____
at *(time)*: _____ in *(Department)*: _____

The following people were at the hearing *(check all that apply)*:

Person in ① Lawyer in ②

Others *(names)*: _____

⑥ After considering the information provided at the hearing, **the court makes the following order:**

a. No Change to Fee Waiver. The *Order on Court Fee Waiver* issued by this court on *(date)*: _____
remains in effect. No change is made at this time.

b. Fee Waiver Is Ended as of: *(date)*: _____. The court finds that beginning on that date you were no
longer eligible for a fee waiver because: _____

(1) You must pay all court fees in this case from the date of this order.

(2) You must also pay the court \$ _____ for fees that were initially waived after you were no longer eligible.

(a) You must pay that amount within 10 days of this order.

(b) You may pay that amount in monthly payments of \$ _____ beginning *(date)*: _____
and payable on the 1st of each month after that until paid in full.

c. **Fee Waiver Is Retroactively Withdrawn.** The court finds that you were never entitled to a fee waiver in
this case because: _____

(1) You must pay all court fees in this case from the date of this order.

(2) You must also pay the court \$ _____ for fees that the court initially waived.

(a) You must pay that amount within 10 days of this order.

(b) You may pay that amount in monthly payments of \$ _____ beginning *(date)*: _____
and payable on the 1st of each month after that until paid in full.

Case Number: _____

Your name: _____

6 d. Fee Waiver Is Modified. The court finds that you obtained the initial fee waiver in bad faith, for an improper purpose, or to needlessly increase the costs of litigation. The court places the following limitations on the fee waiver that was granted to you:

- (1) You must pay all court fees in this case from the date of this order.
- (2) From the date of this order, only the following court fees will be waived (*court to check all that apply*).

You must pay for all court fees that are not checked below:

- Filing papers at superior court Making certified copies Giving notice and certificates
- Sheriff's fee to give notice Sending papers to another court department
- Court-appointed interpreter fees for a witness
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Jury fees and expenses Fees for a peace officer to testify in court
- Court-appointed expert's fees Court fees for telephone hearings
- Other (*specify*): _____

(3) Other modification: _____

e. Other Order: _____

Date: _____

 _____
Signature of Judge or Judicial Officer

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): A certificate of mailing is attached.

I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from (*city*): _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

**Order on Court Fee Waiver After
Reconsideration Hearing
(Superior Court) (Ward or Conservatee)**

Clerk stamps date here when form is filed.

DRAFT

12-03-2018

**Not approved by
the Judicial Council**

1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:
Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

2 Lawyer, if person in 1 has one:
Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

3 (Proposed) ward or conservatee:
Name: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

4 Lawyer for (proposed) ward or conservatee, if any:
Name: _____ State Bar No: _____
Firm or Affiliation: _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Telephone: _____

5 The court made a previous fee waiver order in this case on (date): _____

6 The court sent you a notice to go to court about the fee waiver on (date): _____

Read this form carefully. All checked boxes are court orders.

7 There was a hearing on (date): _____
at (time): _____ in (Department): _____

The following people were at the hearing (check all that apply):

Person in 1 Lawyer in 2 Person in 3 Lawyer in 4

Others (names): _____

8 After considering the information provided at the hearing, **the court makes the following order:**
a. **No Change to Fee Waiver.** The *Order on Court Fee Waiver* issued by this court on (date): _____
remains in effect. No change is made at this time.
b. **Fee Waiver Is Ended as of (date):** _____. The court finds that beginning on that day the ward
or conservatee was no longer eligible for a fee waiver because:

Fill in court name and street address:
Superior Court of California, County of

Court fills in case number when form is filed.
Case Number: _____
Case Name: _____



Name of (Proposed) Ward or Conservatee:	Case Number:
-----------------------------------------	--------------


- 8 b. (1) You must pay all court fees in this case from the ward's or conservatee's estate, from the date of this order.
- (2) You must also pay the court \$ _____ from the estate of the ward or conservatee, for fees that were initially waived after the ward or conservatee was no longer eligible.
- (a) You must pay that amount within 10 days of this order.
- (b) You may pay that amount in monthly payments of \$ _____ beginning (date): _____ and payable on the 1st of each month after that until paid in full.
- c. **Fee Waiver Is Retroactively Withdrawn.** The court finds that the ward or conservatee was never entitled to a fee waiver in this case because: _____
- _____
- _____
- (1) You must pay all court fees in this case from the ward's or conservatee's estate, from the date of this order.
- (2) You must also pay the court \$ _____ from the ward's or conservatee's estate, for fees that the court initially waived.
- (a) You must pay that amount within 10 days of this order.
- (b) You may pay that amount in monthly payments of \$ _____ beginning (date): _____ and payable on the 1st of each month after that until paid in full.
- d. **Fee Waiver Is Modified.** The court finds that you obtained the initial fee waiver in bad faith, for an improper purpose, or to needlessly increase the costs of litigation. The court places the following limitations on the fee waiver that was granted to you:
- (1) You must pay all court fees in this case from the ward's or conservatee's estate, from the date of this order.
- (2) The court waives some fees. The fees checked below are waived. You must pay all other court fees.
- Filing papers at superior court
 - Sheriff's fee to give notice
 - Making certified copies
 - Giving notice and certificates
 - Sending papers to another court department
 - Court-appointed interpreter fees for a witness
 - Jury fees and expenses
 - Court-appointed expert's fees
 - Fees for a peace officer to testify in court
 - Court fees for telephone hearings
 - Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
 - Other (specify): _____
- _____
- _____
- _____



Name of (Proposed) Ward or Conservatee:	Case Number:
-----------------------------------------	--------------

8 d. (3) Other modification: _____

e. Other Order: _____

Date: _____  _____
Signature of Judicial Officer

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): A certificate of mailing is attached.
 I handed a copy of this order to the party and attorney(s), if any, listed in ①, ②, and ④, at the court, on the date below.
 This order was mailed first class, postage paid, to the party and attorney(s), if any, at the addresses listed in ①, ②, and ④, from (*city*): _____, California, on the date below.

Date: _____ Clerk, by _____, Deputy

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Rules and Forms: Miscellaneous Technical Amendments

Committee or other entity submitting the proposal:

Judicial Council staff

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, Sarah.Fleischer-Ihn@jud.ca.gov

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

Approved by RUPRO: October 19, 2018

Project description from annual agenda: Technical changes to rules and forms: Develop rule and form 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....". Specific proposals include updating forms CR-170, CR-191, and CR-220 for technical corrections and formatting updates.

If requesting July 1 or out of cycle, explain:

Requesting effective date of January 22, 2019 because the recommended amendments and revisions do not require major implementation measures by the courts.

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: January 14–15, 2019

Title

Rules and Forms: Miscellaneous Technical Changes

Agenda Item Type

Action Required

Effective Date

January 22, 2019

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 4.551 and 4.700; revise forms CR-160, CR-170, CR-184/MIL-184, CR-191, and CR-220

Date of Report

November 28, 2018

Recommended by

Sarah Fleischer-Ihn, Attorney
Criminal Justice Services

Contact

Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

Judicial Council staff have identified errors in title 4 of the California Rules of Court and in the Judicial Council criminal 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 council, effective January 22, 2019:

1. Amend rule 4.551(a)(1) and (2), to replace references to form MC-275 with form HC-001, the updated form number for the *Petition for Writ of Habeas Corpus*.
2. Amend rule 4.700(a), to add a reference to Family Code section 6211 to the end of the subdivision (following the reference to Pen. Code, § 13700), in accordance with an addition to Penal Code section 136.2 made by Senate Bill 910 (Stats. 2014, ch. 638).

3. Revise *Criminal Protective Order–Domestic Violence* (form CR-160), item 11, to replace an outdated reference to Penal Code section 136.2(i)(2) with Penal Code section 136.2(i)(3), incorporating a renumbering change made by Assembly Bill 264 (Stats. 2017, ch. 270).
4. Revise *Notification of Decision Whether to Challenge Recommendation* (form CR-170), to correct a typographical error by replacing a reference in the footer to Penal Code section 2982.1 with Penal Code section 2972.1.
5. Revise *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184), items 5 and 6, to delete references limiting relief to felonies so that the order accurately reflects that relief under Penal Code section 1170.9(h) applies to both misdemeanor and felony convictions. Penal Code section 1170.9(h) authorizes a court to restore a defendant who acquired a criminal record due to a mental health disorder stemming from service in the United States military, including granting a dismissal of the conviction under Penal Code section 1203.4.
6. Revise *Declaration of Counsel for Appointment in Capital Case* (form CR-191), to replace an incorrect reference to Penal Code section 922 with California Rules of Court, rule 4.117, which defines the qualifications for appointed trial counsel in capital cases.
7. Revise *Proof of Enrollment or Completion–Alcohol or Drug Program* (form CR-220), to replace a reference to Vehicle Code section 23205 with Vehicle Code section 23655. Vehicle Code section 23205 was repealed and replaced by Vehicle Code section 23655 by Senate Bill 1186 (Stats. 1998, ch. 118).

The text of the amended rules and revised forms are attached at pages 4–11.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references.

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

None

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 4.551 and 4.700, at page 4
2. Forms CR-160, CR-170, CR-184/MIL-184, CR-191, and CR-220, at pages 5–11

Rules 4.551 and 4.700 of the California Rules of Court would be amended, effective January 22, 2019, to read:

1 **Rule 4.551. Habeas corpus proceedings**

2
3 **(a) Petition; form and court ruling**

4
5 (1) Except as provided in (2), the petition must be on the *Petition for Writ of*
6 *Habeas Corpus* (form ~~MC-275~~ HC-001).

7
8 (2) For good cause, a court may also accept for filing a petition that does not
9 comply with (a)(1). A petition submitted by an attorney need not be on the
10 Judicial Council form. However, a petition that is not on the Judicial Council
11 form must comply with Penal Code section 1474 and must contain the
12 pertinent information specified in the *Petition for Writ of Habeas Corpus*
13 (form ~~MC-275~~ HC-001), including the information required regarding other
14 petitions, motions, or applications filed in any court with respect to the
15 conviction, commitment, or issue.

16
17 (3)–(5) * * *

18
19 **(b)–(h) * * ***

20
21 **Rule 4.700. Firearm relinquishment procedures for criminal protective orders**

22
23 **(a) Application of rule**

24
25 This rule applies when a court issues a criminal protective order under Penal Code
26 section 136.2 during a criminal case or as a condition of probation under Penal Code
27 section 1203.097(a)(2) against a defendant charged with a crime of domestic violence as
28 defined in Penal Code section 13700 and Family Code section 6211.

29
30 **(b)–(d) * * ***

31

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR COURT USE ONLY

DRAFT

Not approved by
the Judicial
Council

PEOPLE OF THE STATE OF CALIFORNIA
VS.

DEFENDANT:

CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2),
136.2(i)(1), 273.5(j), 368(f), and 646.9(k))

- ORDER UNDER PENAL CODE, § 136.2
MODIFICATION
PROBATION CONDITION ORDER (Pen. Code, § 1203.097)
ORDER UNDER: PENAL CODE, § 136.2(i)(1) PENAL CODE, § 273.5(j)
PENAL CODE, § 368(f) PENAL CODE, § 646.9(k)

CASE NUMBER:

This Order May Take Precedence Over Other Conflicting Orders; See Item 4 on Page 2.

PERSON TO BE RESTRAINED (complete name):
Sex: M F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

- 1. This proceeding was heard on (date) at (time) in Dept. Room:
by judicial officer (name):
2. This order expires on (date). If no date is listed, this order expires three years from date of issuance.
3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. FULL NAME, AGE, AND GENDER OF EACH PROTECTED PERSON:
5. For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:
6. The court has information that the defendant owns or has a firearm or ammunition, or both.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

- 7. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
8. must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.
9. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
10. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise.
11. must be placed on electronic monitoring for (specify length of time). (Not to exceed 1 year from the date of this order. Pen. Code, § 136.2(a)(1)(G)(iv) and Pen. Code, § 136.2(i)(3).)
12. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
13. must have no contact with the protected persons named above through a third party, except an attorney of record.
14. must not come within yards of the protected persons and animals named above.
15. must not take, transfer, sell, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in item 5.
16. may have peaceful contact with the protected persons named above, as an exception to the "no-contact" or "stay-away" provision in item 12, 13, or 14 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
a. the Family, Juvenile, or Probate court order in case number: issued on (date):
b. any Family, Juvenile, or Probate court order issued after the date this order is signed.
17. The protected persons may record any prohibited communications made by the restrained person.
18. Other orders including stay-away orders from specific locations:

Executed on: (DATE) (SIGNATURE OF JUDICIAL OFFICER) Department/Division:

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).
2. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.

Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 8 on page 1 of this order. *The court must check the box under item 8 to order an exemption from the firearm relinquishment requirements.* If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

3. ENFORCING THIS ORDER IN CALIFORNIA

- This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
- Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

4. CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT

If more than one restraining order has been issued, the orders must be enforced according to the following priorities:

- a. *Emergency Protective Order:* If one of the orders is an Emergency Protective Order (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, § 136.2(c)(1)(A).)
- b. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
- c. *Criminal Order:* If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
- d. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

5. CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).

This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

6. EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS

- These orders are effective as of the date they were issued by a judicial officer.
- These orders expire as ordered in item 2 on page 1 of this order, **or as explained below.**
- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
- Orders issued under Penal Code sections 136.2(i)(1), 273.5(j), 368(l), and 646.9(k) are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison, county jail, or **or** subject to mandatory supervision or if imposition of sentence is suspended and the defendant is placed on probation.
- Orders under Penal Code section 1203.097(a)(2) are probationary orders, and the court has jurisdiction as long as the defendant is on probation.
- To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.

7. CHILD CUSTODY AND VISITATION

- Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
- Unless box a or b in item 16 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
- If box a or b in item 16 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, state bar number, and address</i>): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (<i>Name</i>): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt;">DRAFT</p> <p style="text-align: center; font-size: 24pt;">Not approved by the Judicial Council</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p>	
<p style="text-align: center;">PEOPLE OF THE STATE OF CALIFORNIA vs.</p> DEFENDANT: Date of birth: _____ California Dept. of Corrections No. (<i>if applicable</i>): _____	CASE NUMBER: _____
<p>NOTIFICATION OF DECISION WHETHER TO CHALLENGE RECOMMENDATION (Pen. Code, § 2972.1)</p>	

1. Defendant (*name*):
has met and conferred with counsel regarding the Penal Code section 1606 report recommending confinement or continued outpatient treatment.

Check **a.** or **b.**:

- a. I do not believe that I need further treatment, and I demand a jury trial to decide this question.
- b. I accept the recommendation that I continue treatment.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF DEFENDANT)

2. I am counsel for the above-named defendant. I certify that I have explained the report and recommendation to the defendant.
Defendant:

- a. signed this form as indicated above.
- b. refused or is unable to sign this form.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL (Military Personnel) (Pen. Code, §§ 17(b), 1170.9(h))	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that granting restorative relief is in the interests of justice, and that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for and ORDERS the following requested relief:

- The court deems all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs.
- The court terminates probation prior to the expiration of the term of probation, if the term of probation has not yet expired.
- 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 reduces the following felony convictions to misdemeanors:
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
- The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for the following felony convictions:
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
- The court **GRANTS** the petition for dismissal regarding the following **felony** convictions in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C), and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed:
 - ALL **FELONY** CONVICTIONS in the above-entitled action; or
 - Only the following **felony** convictions in the above-entitled action (*specify charges and date of conviction*):
- The court **DENIES** the petition for dismissal regarding the following **felony** convictions under Penal Code section 1170.9(h):
 - ALL **FELONY** CONVICTIONS in the above-entitled action; or
 - Only the following **felony** convictions in the above-entitled action (*specify charges and date of conviction*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
-------------------------------------------------	--------------

- 7. The court ORDERS, in accordance with Penal Code section 1170.9(h)(4)(D), the sealing of police records of the arrest and court records of the dismissed action, hereafter viewable by the public only in accordance with a court order.
- 8. The court ORDERS that the Department of Justice be notified of the sealing order.
- 9. If this order is granted under the provisions of Penal Code section 1170.9(h):
 - a. The petitioner is released from all penalties and disabilities resulting from the offense(s) of which he or she has been convicted in the dismissed action.
 - b. Dismissal of the conviction does not *automatically* relieve a person from the requirement to register as a sex offender under Penal Code section 290. (See, e.g., Pen. Code, § 290.5.)
 - c. The petitioner is not obligated to disclose the arrest on the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except when he or she is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.
 - d. The dismissal of the action shall be a bar to any future action based on the conduct charged in the dismissed action.
 - e. In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal had not been granted.
 - f. A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the petitioner's driving privilege on the ground of two or more convictions.
 - g. The petitioner's DNA sample and profile in the DNA data bank shall not be removed by a dismissal.
 - h. Dismissal of an accusation, information, or conviction does not authorize a petitioner to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction pursuant to Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.
- 10. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b) or 1170.9(h) 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 he or she 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).

<i>FOR COURT USE ONLY</i>

Date:

(JUDICIAL OFFICER)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council
_____ <p style="text-align: center;">PEOPLE OF THE STATE OF CALIFORNIA</p> <p style="text-align: center;">VS.</p> _____ DEFENDANT:	
DECLARATION OF COUNSEL FOR APPOINTMENT IN CAPITAL CASE	CASE NUMBER: _____

I request appointment under rule 4.117 of the California Rules of Court (please check 1 or 2):

1. My qualifications are set forth in the declaration on file with this court.
2. My qualifications are *(attach additional sheets if necessary)*:
 - a. I am an active member of the State Bar of California. My State Bar number is:
 - b. I am admitted to practice *pro hac vice* pursuant to rule 9.40.
 - c. I have the following criminal or civil trial experience *(specify case name, number, county, judge, and your role, including whether you were lead or associate counsel)*:

 - d. I have the following experience in death penalty trials *(specify case name, number, county, judge, and your role, including whether you were lead or associate counsel)*:

 - e. I have the following experience with expert witnesses and psychiatric and forensic evidence *(specify)*:

 - f. In the past *(specify)*: _____ years, I have completed *(specify)*: _____ hours of specialized training in the defense of persons accused of capital crimes *(specify nature of training)*:

 - g. I have ongoing consultation support from the following experienced death penalty counsel *(name and address)*:

 - h. I am certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

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)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
 STREET ADDRESS:
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME:

NAME OF DEFENDANT:
 STREET ADDRESS:
 CITY: STATE: ZIP CODE:

DATE OF COURT ORDER:

(check one):
 PROOF OF ENROLLMENT IN ALCOHOL OR DRUG PROGRAM
 PROOF OF COMPLETION OF ALCOHOL OR DRUG PROGRAM

FOR COURT USE ONLY

DRAFT

**Not approved by
the Judicial Council**

CASE NUMBER:

DESCRIPTION OF ALCOHOL OR DRUG PROGRAM

Name of program:
 Address of program:
 Program license number: Program telephone number:

PROOF OF ENROLLMENT

1. Defendant (name): enrolled in the alcohol or drug education program described above on (specify date of enrollment):

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

Date:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF DEFENDANT)

Date:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF PROGRAM DIRECTOR OR INSTRUCTOR)

_____ (TITLE)

PROOF OF COMPLETION

2. Defendant (name): successfully completed the alcohol or drug education program described above on (specify date of completion):

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

Date:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF DEFENDANT)

Date:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF PROGRAM DIRECTOR OR INSTRUCTOR)

_____ (TITLE)

— INSTRUCTIONS —

YOU NEED TWO OF THESE FORMS:

- UPON ENROLLMENT IN A COURT-ORDERED ALCOHOL OR DRUG EDUCATION PROGRAM, FILL OUT THE PROOF OF ENROLLMENT PORTION OF ONE COPY OF THIS FORM AND FURNISH IT TO THE SENTENCING COURT WITHIN THE TIME AND IN THE MANNER SPECIFIED BY THE COURT.**
- UPON SUCCESSFUL COMPLETION OF THE PROGRAM, FILL OUT THE PROOF OF COMPLETION PORTION OF A SECOND COPY OF THIS FORM AND FURNISH IT TO THE SENTENCING COURT WITHIN THE TIME AND IN THE MANNER SPECIFIED BY THE COURT.**

FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN THE REVOCATION OF YOUR PROBATION.
SI USTED NO CUMPLE CON ESTOS REQUISITOS, SU INCUMPLIMIENTO PUEDE RESULTAR EN LA REVOCACION DE SU LIBERTAD

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Family Law Forms: Technical Changes

Committee or other entity submitting the proposal:

Judicial Council staff

Staff contact (name, phone and e-mail): Gregory Tanaka, gregory.tanaka@jud.ca.gov

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

Approved by RUPRO: October 19, 2018

Project description from annual agenda: Family and Juvenile Law Advisory Committee (item 27 of annual agenda)
Technical Changes to Rules and Forms Develop rule and form 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:

Judicial Council staff have identified errors that are technical in nature in a Judicial Council protective order form. They recommend making the necessary corrections to avoid confusion for court staff, judicial officers, and members of the public who use the form.

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 January 14–15, 2019

Title	Agenda Item Type
Family Law Forms: Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form DV-630	January 22, 2019
Recommended by	Date of Report
Judicial Council staff	November 14, 2018
Gregory Tanaka, Supervising Attorney	Contact
Center for Families, Children & the Courts	Gregory Tanaka, 415-865-7671 gregory.tanaka@jud.ca.gov

Executive Summary

Judicial Council staff have identified errors that are technical in nature in a Judicial Council protective order form. They recommend making the necessary corrections to avoid confusion for court staff, judicial officers, and members of the public who use the form.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective January 22, 2019, revise *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630) to:

1. Include the California Law Enforcement Telecommunications System (CLETS) entry code, CLETS-OSC, in the footer of each page;
2. Add “Approved by DOJ” in the footer of page 1; and
3. Add “Province,” “Country,” and “Postal Code” to items 1 and 2 on page 1 to be inclusive of Canadian address information.
4. Replace text above case number caption on page 1 (“*Fills in case number:*”) with “*Court fills in case number when form is filed.*”

The text of the revised form is attached at pages 3–4.

Relevant Previous Council Action

Form DV-630 was approved as a new mandatory form by the Judicial Council at its meeting on September 21, 2018, to implement Senate Bill 204 (Stats. 2017, ch. 98), allowing for domestic violence protective orders issued in a Canadian civil court to be registered and enforced in California. The council adopted the recommended form, effective January 1, 2019.¹

Analysis/Rationale

The proposed changes to the form are technical in nature and necessary to correct information that was unintentionally omitted.

Policy implications

The technical changes recommended to form DV-630 provide for continued effective and consistent procedures in the entry of protective orders into CLETS. The omission of the CLETS code, assigned by the Department of Justice (DOJ), could cause confusion in the entry of registered protective orders into CLETS. The addition of address information that is used in Canada will make the form inclusive of protected and restrained persons who may reside in that country. The replacement language above the case number caption was inadvertently omitted and clarifies the meaning of the sentence to avoid confusion.

Comments

This proposal was not circulated for comment because it recommends a noncontroversial, technical revision, and is therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Staff considered delaying the recommendation but concluded that the form needs to be changed as soon as possible, given the urgent policy implications noted above.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in some costs to the courts to replace the prior version of the form, both in paper and electronic systems.

Attachments and Links

1. Form DV-630, at pages 3–4

¹ The Judicial Council report is available at <https://jcc.legistar.com/View.ashx?M=F&ID=6612526&GUID=BCF98E30-B026-4C9E-8CF8-E1E16C71C73E>.

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.

Clerk stamps date here when form is filed. DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address: Superior Court of California, County of

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

1 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/Province: Zip/Postal Code: Country:
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/Province: Zip/Postal Code: Country:
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.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Juvenile Law: Guardianship Information

Committee or other entity submitting the proposal:

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

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

Approved by RUPRO: October 19, 2018

Project description from annual agenda: Revise two forms to update legal information covering the establishment, oversight, modification, and termination of guardianships in juvenile court proceedings in language and a format easily understood by a person not trained in law. The revisions are needed to comply with an ongoing statutory mandate and to work collaboratively with Probate and Mental Health as well as the Committee on Providing Access and Fairness on issues related to court coordination and allegations of child abuse and neglect in guardianship cases.

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 circulated for comment in spring 2018. In light of significant reformatting and substantive revisions, the committee requests that the proposal circulate again for additional comment.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

W19-07

Title	Action Requested
Juvenile Law: Guardianship Information	Review and submit comments by February 12, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form JV-330; revise and renumber form JV-350 as JV-350-INFO	September 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Corby Sturges, Attorney 415-865-4507 phone corby.sturges@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising one form and revising and renumbering another form to update legal information for prospective guardians of children in juvenile court proceedings, in language and a format easily understood by a person not trained in law. The proposal is needed to comply with an ongoing statutory mandate. Revisions were suggested both informally and through the spring 2018 comment cycle by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

The Proposal

The Family and Juvenile Law Advisory Committee proposes revising two Judicial Council forms to update legal information for prospective guardians of children in juvenile court proceedings. The information addresses the establishment, conduct, modification, and termination of juvenile court guardianships. Much of the information in form JV-350 is out of date because the pamphlet was last revised in 2001.

Revisions to form JV-350 are needed to conform to the continuing mandate in section 68511.1 of the Government Code, which requires the council to develop "a pamphlet explaining the nature of a guardianship of a minor and the rights, duties, and obligations of a person serving as guardian of a minor." (Gov. Code, § 68511.1.) The revisions are also intended to fulfill the statutory mandate to use "language easily understood by a lay person not trained in law." (*Ibid.*) The proposed revisions will help persons not trained in law to understand the process of

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

appointing a guardian in a juvenile court proceeding, the court's role in overseeing the guardianship, and the duties of a guardian. Better-informed guardians will reduce the need for court intervention after appointment.¹

Specifically, the committee proposes, effective September 1, 2019, to:

1. Revise *Letters of Guardianship (Juvenile)* (form JV-330) to:
 - Indicate that the form applies to all guardianships established by the juvenile court, whether in child welfare proceedings, under Welfare and Institutions Code² sections 360 and 366.26, or in juvenile justice proceedings, under section 728.
 - Clarify that the guardian's legal powers and duties are specified by the Probate Code even though the guardian is appointed by the juvenile court;
 - Indicate clearly that the juvenile court, not the probate court, retains jurisdiction to regulate, modify, and terminate the guardianship, and specify that this includes the authority to appoint a successor guardian and to approve moving the child's residence out of California;
 - Separate the guardian's affirmation from the clerk's witness;
 - Separate the clerk's issuance, which must be completed on the original Letters of Guardianship, from the clerk's certification of a true copy, which must be completed only when the clerk issues a certified copy of the form; and
 - Expand and clarify the notice of the purpose and intended use of the Letters.
2. Revise *Guardianship Pamphlet (Juvenile)* (form JV-350) to:
 - Reformat the pamphlet as an informational form, and rename it *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO);
 - Clarify and update legal information, including information about eligibility for financial support and other benefits;
 - Expand the form's scope to include juvenile justice proceedings;
 - Inform a prospective guardian of the authority, added by Senate Bill 438 (Stats. 2017, ch. 307), of the social worker or probation officer to name a successor guardian in the assessment for appointment of an initial guardian; and
 - Use plain language and user-friendly formatting to convey information to prospective guardians.

Alternatives Considered

The committee considered recommending that the council adopt revisions to these forms as proposed and circulated for comment in spring 2018, with only minor modifications in response to comments received. After reformatting and additional legal analysis, however, the committee

¹ In addition, the revisions to form JV-350-INFO would partly fulfill the council's commitment to promote case closure by providing information to attorneys and judges about the funding available to guardians after juvenile court jurisdiction is terminated.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

determined that the scope of the changes made after comment was sufficient to warrant recirculation for a second round of public comment.³

Fiscal and Operational Impacts

The proposal would require courts to provide copies of the updated forms. Courts that issue paper copies of the guardianship information form would incur more costs than courts that distribute the form electronically. All courts would incur costs to produce hard copies of the revised *Letters of Guardianship*, but, because that form is issued on a case-by-case basis, there may be no additional printing costs imposed. Courts would also need to integrate the revised Letters into their electronic case management systems. The revisions should make the process clearer and more accessible for guardians and prospective guardians, thereby reducing the overall time and cost of the process for courts, justice partners, and attorneys.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Forms JV-330 and JV-350-INFO, at pages 4–10
2. Chart of spring 2018 comments and committee responses, at pages 11–23
3. Gov. Code, § 68511.1,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=68511.1
4. Sen. Bill 438,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB438

³ A chart of comments received in spring 2018 with committee responses is attached at pages 11–23.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
LETTERS OF GUARDIANSHIP (JUVENILE)	CASE NUMBER:

LETTERS

1. (Name): _____ is appointed guardian of the person
 of (child's name): _____ (date of birth): _____
 with the authority and responsibility to make decisions and provide for the child's care, custody, control, education, residence, and medical treatment as set forth in sections 2351–2358 of the Probate Code.
2. Other powers granted or conditions imposed (specify):

continued on Attachment 2.

AFFIRMATION

3. I solemnly affirm that I will perform the duties of a guardian according to law. I have received a copy of *Duties of Guardian* (form GC-248).
- Signed on (date): _____ at (place): _____, California.

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF APPOINTEE)

ISSUED, clerk of the court, with seal of the court affixed:

(SEAL)	Date: _____ Clerk, by _____, Deputy
--------	--------------------------------------------

NOTICE

The juvenile court named above has jurisdiction over this guardianship. Any request to change or end the guardianship, including a request to move the child's residence out of California, to change a visitation order, or to appoint a successor guardian, must be filed in the juvenile court using *Request to Change Court Order* (form JV-180).

(Continued on the next page)

CHILD'S NAME:	CASE NUMBER:
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**IMPORTANT NOTICE
TO GUARDIAN OF CHILD**

This form, called *Letters of Guardianship*, is evidence of your appointment as guardian of the child. The *Letters* stay in effect until the guardianship ends. A guardianship ends when the child reaches 18 years of age unless any of the following events happens before then: the child dies; the child is adopted; the child is emancipated by getting married, entering active military duty, or receiving a declaration of emancipation; or the court orders the guardianship to end.

To verify your appointment to school personnel, medical personnel, and other service providers, you will need to show them a certified copy of the *Letters*. Be sure to keep this form in a safe place. If you misplace the form, you will need to request a new, certified copy from the clerk of the juvenile court. You may be charged a fee for the certified copy.

CERTIFICATION

I certify that this is a correct copy of the original form on file in my office and that the *Letters* issued to the person named on page one have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by _____, Deputy

JV-350-INFO Becoming a Child's Guardian in Juvenile Court

This form is about becoming the guardian of a child at the end of the child's juvenile court case if the child cannot return home or be adopted.

The form explains:

- Who can become a guardian;
- How to ask to become a guardian in juvenile court;
- The differences between foster parents, guardians, and adoptive parents; and
- A guardian's legal rights and duties.

To become the guardian of a child who does **not** have a juvenile court case, you must ask the *probate* court. Read Judicial Council forms GC-205, GC-505, and GC-510 to learn more about probate guardianships.

For more information, visit the California Courts website at www.courts.ca.gov/1206.htm or talk to a lawyer with experience in juvenile court. Learn how to find a lawyer on the website at www.courts.ca.gov/selfhelp-findlawyer.htm.

1 What is a guardian?

A guardian is a person, other than a parent, who has legal and physical custody of a child and can make the same decisions that a parent can about the child's care and control, residence, education, and medical treatment.

2 Who can become a guardian in juvenile court?

To become a child's court-appointed guardian, you must:

- Be an adult (18 years old or older);
- Not be the child's parent;
- Be approved by the county child welfare agency or juvenile probation department; and
- Be appointed by the court as "guardian of the person" and get *Letters of Guardianship*.

3 Can a relative be appointed guardian?

Yes. The juvenile court can appoint any approved adult, including a relative, except for the child's parent.

4 How does a juvenile court case start?

A social worker or prosecuting attorney files a petition asking the court to make orders to keep the child and the community safe. Sometimes, the court decides that a child cannot live safely in a parent's home. And the court cannot let the child go home unless the home is safe.

5 If the child cannot live safely at home, what happens?

If the court cannot let a child go home, the social worker or probation officer will find a safe home where the child can live temporarily. They will try to find a relative who is approved as a resource family to be the child's foster parent. If they can't find an approved relative, they will look for an approved nonrelative to be the foster parent.

If you want to be a child's foster parent, tell the child's social worker or probation officer as soon as you can. Ask how you can get approved as a resource family.

6 Are foster parents the same as guardians?

No. Foster parents are *not* guardians, but the court can, and often will, appoint them to be guardians. Foster parents have some legal rights, including:

- The right to get notice of their foster child's court hearings and go to the hearings; and
- The right to give the court information about their foster child's needs.

7 Who else can be involved in the child's court case?

The child's relatives can. If you are a relative, even if you are not the child's foster parent, you can still give the court important information in writing.

8 Will the child be returned to the parent?

In most cases, the social worker or probation officer works with the family by giving them services so that the child can return to live at home.

Sometimes the court decides the child cannot return home safely. If that happens, the court will deny or stop services for the parent. The social worker or

probation officer will recommend to the court a permanent plan for the child in a written report.

9 Is guardianship a permanent plan?

Yes. A guardianship is one of several possible permanent plans, intended to last until the child turns 18. If the child cannot return home, adoption is the preferred permanent plan because it is more secure. (Later, this form talks more about adoption.) But if adoption is not possible, the court will try to appoint a guardian for the child.

HOW TO BECOME THE CHILD'S GUARDIAN**10 How do I ask to become the guardian?**

If you want the court to appoint you the child's guardian, you should:

- Tell the social worker or probation officer; and
- Ask in the courtroom at a hearing.

Think carefully! If the court appoints you, the guardianship will last until the child turns 18. The court will not "undo" or end a guardianship unless:

- Something really important has changed; and
- It is in the child's best interests to end it.

11 What are the steps to becoming a guardian?

There are several steps to becoming a child's guardian in juvenile court:

- A. The social worker or probation officer will interview you and visit your home to make sure you and your home are safe for the child.
- B. The social worker or probation officer will write a report to the court to recommend a permanent plan for the child.

Note: If the report does not recommend you as guardian, ask the social worker or probation officer if they will name you as a prospective successor guardian. Then you might be assessed and appointed if the first appointed guardian can no longer serve.

- C. There will be a court hearing to decide the child's permanent plan. You will get a notice that tells you when and where the hearing will happen.
- D. Go to the hearing and talk to the judge. The child's parents and other people interested in the case can also go to the hearing and tell the judge

what they think about you being the child's guardian.

12 How does the court decide whether to appoint me as guardian?

The court will consider:

- Whether the child can be adopted;
- The recommendation in the agency's report;
- What you and other people say at the hearing; and
- Any other reasons for or against appointing you as guardian.

The court will appoint you as guardian if it decides that:

- A guardianship is best for the child; *and*
- You would be a good guardian.

13 What if the court appoints me as guardian?

If the court appoints you as guardian, take the order to the clerk and ask for a certified copy of *Letters of Guardianship* (form JV-330). This form is proof that you are the child's guardian. Make copies of the Letters and keep the certified copy in a safe place. Take a copy of the Letters with you whenever you:

- Take the child to a doctor, dentist, or therapist;
- Sign the child up for school or go to school meetings; or
- Travel with the child.

14 Will the court oversee me as guardian?

When it appoints you, the court can give you other orders, such as to notify the court if you move or to allow the parents or siblings to visit and spend time with the child. You must obey the court's orders.

After it appoints you, the juvenile court may oversee the guardianship to make sure you perform your duties. You won't usually have to go to court unless the court keeps the juvenile case open or someone asks the court to change its orders or make new orders. Even after the juvenile case is closed, anyone, *including you*, can use form JV-180 to ask the juvenile court to give you directions, review your plans or actions as guardian, change its previous orders, or end the guardianship.

The social worker or probation officer might also offer permanent placement services to help you and the child get used to the new living arrangement.

They might also ask you to do certain things for the child. If you don't do what they ask, they might then ask the court to order you to do it.

15 When will the guardianship end?

A guardianship lasts until the child turns 18 unless:

- The child dies;
- The child is adopted (by you or another adult); or
- The child is emancipated (or freed from your control) by getting married, entering on active military duty, or getting a court order.

The court can also order a guardianship to end before the child turns 18, but only if it is in the child's best interests—even if the parent asks for custody and their home is safe.

Note: If the child keeps living with you after turning 18, you can get financial help if the child is eligible for KinGAP or extended foster care and you meet other conditions. See page 5 for more information.

16 Can the court replace me as guardian?

Yes. The court will consider replacing you as guardian if asked by:

- You, the guardian;
- Any other interested adult; or
- The child, if 14 years old or older.

The judge will only replace you if something has changed and it is in the child's best interests.

17 How is guardianship different from adoption?

Both a guardian and an adoptive parent, in place of the birth parents, have legal and physical custody of the child. But there are many differences.

Permanence. In a guardianship, the parent's rights are only *suspended*. The court can end a guardianship and give the parents back their rights if it decides that would be in the child's best interests. In an adoption, parental rights are *permanently ended*. The adoptive parent is the child's legal parent. The birth parents cannot get their rights back.

Important! If guardianship and adoption are both possible, the court is legally required to choose adoption because it is more stable.

Visitation. In a guardianship, the court can make an order allowing the parents or other relatives to visit a child. The guardian must obey the visitation order, as well as all other court orders. In an adoption, parents and other relatives lose their rights to visit the child unless the court says they can have contact after adoption.

Duration. A guardianship lasts until the child turns 18 unless something happens to end the guardianship before then. A court can order a guardianship to end only if that is in the child's best interests. An adoption is intended to last forever. A court can only end an adoption by terminating parental rights in a new juvenile or family law case.

Court oversight. The court controls a guardianship and can make orders, including to replace the guardian or end the guardianship, if someone asks and the request is in the child's best interests. The court does not oversee an adoption once it is final.

Inheritance. A child in a guardianship can still inherit property from a parent. If the court knows the child has or might inherit property, the judge may also appoint a "guardian of the estate" to manage the property. An adopted child usually cannot inherit from a birth parent.

18 How is a guardian different from a foster parent?

Foster parents and guardians are both responsible for taking care of other people's children. But there are important differences.

Permanence. Foster care is intended to be temporary; it can end at any time. A guardianship gives a child a stable, lasting home and relationship.

Court supervision. The court holds review hearings every six months for a child in foster care. A social worker or probation officer visits a foster placement regularly. In a guardianship, no regular hearings or visits are required unless the court keeps the juvenile case open.

Duties. A foster parent provides food, clothing, housing, and emotional support to the child under the supervision of a social worker or probation officer. A guardian has more rights and duties to the child, but receives fewer services and less personal support.



GUARDIAN'S RIGHTS AND RESPONSIBILITIES

Subject to the court's orders, a court-appointed guardian has the same rights to legal and physical custody of the child as a parent does. In general, you must care for and control the child the same way a parent would.

Specifically, that means you must:

19 Arrange a place for the child to live

If you move the child to a new address in California, you must notify the court in writing. To move the child out of California, you must get court approval first. Use form JV-180 to ask the court to approve. Other states have different guardianship laws. If you plan to move to another state, find out about your legal rights and duties in that state.

20 Arrange for the child's health care

You can allow (*consent*) to most medical or dental treatment for the child. But if the child is at least 14 years old and does not want to have a non-emergency surgery, you must get permission from the court first.

The law also allows older and more mature children to get some medical treatment on their own without your approval, including:

- Outpatient mental health treatment;
- Reproductive health care; and
- Drug and alcohol treatment.

21 Provide for the child's education

You can choose the child's school and learning programs just as a parent can. In special situations, the court may also be involved in these decisions. Pay attention to how the child does in school and meet with the child's teachers. If the child needs special education or other specialized services, you can also ask the school or other providers for these services.

22 Access social services

You can get help for the child from other programs, such as:

- Head Start;
- Regional centers for persons with developmental delays or disabilities;
- Health care services; and
- After-school care.

23 Give consent to the child's marriage

You can allow the child to marry, but you must get the court's permission first. Once the child gets married, the guardianship will end.

24 Give consent to the child's military service

You can allow the child to enlist in the U.S. military. Once the child enters on active duty, the guardianship will end.

25 Give consent for the child's driver's license

You must give your permission for the child to get a driver's license. (See responsibilities listed below.)

26 Pay for harm caused by child's driving

You will have to pay for any damage the child causes when driving. The law limits how much money you can be forced to pay. If you're concerned about this responsibility, you should talk to a lawyer.

You must get insurance to cover the child when driving. (The child cannot get a license without your written permission.) If you change your mind later, you can sign a form at the DMV to cancel the child's driver's license.

27 Pay for harm caused by child's other acts

Willful misconduct. In most cases, a guardian could be made to pay only for harm to another person caused by the child's willful misconduct. There is usually a limit about how much you could be made to pay.

Negligent conduct. You could be made to pay for harm caused by the child's negligent conduct. If you're concerned about this responsibility, you should talk to a lawyer.

28 Pay for the child's needs

The parents are still legally responsible for child support, but you can accept this responsibility. You can get money to help you support the child. See page 5 for more information.

29 Obey all court orders

The court may require you to accept other duties. For example, the judge may order you to take the child to visit a parent or other relative. You must do what the court orders.

FINANCIAL HELP

You may be able to get financial help from the government. The type of help can depend on the child’s eligibility for aid and relationship to you.

Important! Before you become the child’s guardian, ask the child’s social worker or probation officer or a lawyer if you will qualify for financial help. Be sure to ask whether you qualify as a relative. The law treats more people as relatives than you might think!

If the Child Is Related to You

If you become the guardian of a child who is a relative, you may qualify for financial help from these programs:

- **KinGAP program:** If the juvenile case is closed and you sign a written agreement, you can qualify for KinGAP payments. KinGAP gives you the same monthly payments as a foster parent caring for a foster child. You can receive KinGAP in any county or state, but the amount may change from state to state. In California, the payments are the same amount as foster care payments.
- **Approved Relative Caregiver (ARC) program:** If the court keeps the juvenile case open after appointing you guardian, you may be eligible to receive ARC or foster care payments instead of KinGAP.
- **CalWORKS (cash assistance):** A relative guardian who does not qualify for KinGAP may qualify for CalWORKS payments. If you have low income, you may get a full CalWORKS grant. If your income is too high to qualify for a full grant, you can still receive a “child-only” CalWORKS grant.
- **Health care:** Children who qualify for KinGAP can get health care through Medi-Cal.
- **Independent living services (ILP):** Beginning at age 16, most children can get ILP money and services to help them become successful adults. The services available depend on the child’s age when KinGAP payments started.

If the Child Is NOT Related to You

In California, guardians who are not related to the child can get foster care payments from the state. However, if the child moves to another state, those payments will end. The other state might not offer the same payments.

- **Foster care payments:** Foster care payments and other services give you more money than CalWORKS payments. The state will check continuing eligibility every 6 months.
- **Health care:** Children who qualify for foster care payments can get health care through Medi-Cal.
- **Independent living services (ILP):** Beginning at age 16, most children can get ILP money and services to help them become successful adults.

If the child keeps living with you after turning 18

KinGAP or extended foster care payments can continue after the child turns 18 if the young adult continues to live with you and is otherwise eligible, and you both sign agreements with the department. Generally, payments must end when a person turns 21. But if KinGAP payments started before the child turned 16, they must end when the child turns 18 unless the child is in high school or has a disability. Medi-Cal coverage can continue until age 26.

Important! Talk to the child’s social worker or probation officer or a lawyer a few months before the child turns 18 to make sure the child doesn’t miss any payments.

Other Financial Help

If you do not qualify for KinGAP or foster care payments, you may be able to get Social Security, Supplemental Income (SSI), Medi-Cal, or other financial help.

You can also get help and information from: *[Add local agencies and contact information]*



SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	The pamphlet should also mention that the guardian is required to follow any visitation orders the court makes and that a JV-180 would be required to change those orders also.	The committee agrees with the suggestions and has modified its recommendation to clarify the effect of visitation orders and the process for seeking to modify them.
2.	County of Los Angeles Department of Children and Family Services by Ruena Borja, Children Services Administrator I	AM	<p>Will this pamphlet be translated in other languages, e.g., Spanish?</p> <p>Can it be available in electronic form for dissemination?</p> <p>Perhaps it can start with a more strengths-based tone, such as acknowledging and conveying their important role in caring and providing permanency for a child. We suggest that this tone is reflected throughout the document.</p> <p>‘supervise’ might imply that the court will continue to be actively involved in the same manner as when it had/will have when jurisdiction was/remains open.</p>	<p>Yes, the committee intends for the form to be translated into Spanish.</p> <p>Yes, the committee intends for the form to be available electronically on the California Courts public website, where anyone can view, download, or print it. Local courts and agencies can link their websites to the state court website’s forms page.</p> <p>The committee has reformatted the form to use plain language and a user-friendly presentation. The changes are intended, in part, to affirm the importance of the guardian’s role in the care and custody of the child, to highlight the nature and extent of the guardian’s responsibilities, and to promote the long-term stability of these relationships. No disrespect to guardians or other caregivers is intended.</p> <p>The committee acknowledges that, although the juvenile court retains jurisdiction over the guardianship even if dependency or delinquency jurisdiction is terminated (Welf. & Inst. Code, §§ 366.4, 728(f)), and the guardian is subject to “the regulation and control of the court” (Prob. Code, § 2102 (applied to juvenile court guardianships by Welf. & Inst. Code, § 366.4)), the juvenile court does not supervise a</p>

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

SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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

	Commentator	Position	Comment	Committee Response
			<p>Add information to state that, although the guardianship ends at 18, they may be able to receive extended foster care benefits (for non-relatives) or KinGAP if they meet certain criteria.</p> <p>Not sure what this sentence is referring to since federal and state Kin-GAP rates should be whatever the child should have received in foster care.</p> <p>It is not clear if the Guardianship Information Pamphlet is for Juvenile Dependency guardianships. The pamphlet includes the use of the GC forms and refers to the Probate Code which was confusing. For example, page 9 indicates that if the LG wishes to move out of state, the LG must provide notice via the GC-079 and GC-080; however, these are probate forms.</p>	<p>guardianship as actively as it does a dependency or wardship. No regular review hearings are required after the court terminates dependency or wardship. The court’s exercise of its oversight authority depends on the filing of a request to change a court order under section 388. The committee has replaced “supervise” with other terms to indicated this lower level of oversight.</p> <p>The committee agrees and has added information about benefits available to nonminor former dependents and wards living with former guardians.</p> <p>The committee has revised this sentence to remove the distinction.</p> <p>The committee agrees that the references to forms GC-079 and GC-080 are unnecessary. The committee intends this form to provide information about guardianships established and overseen by the juvenile court. The court has authority to establish a guardianship in a child welfare proceeding, under Welfare and Institutions Code sections 360(a) and 366.26, and in a juvenile justice proceeding, under section 728. Under section 366.4 of the Welfare and Institutions Code, juvenile court guardianships are governed by part 4 (beginning with section 2100) of division 4 of the Probate Code to the extent</p>

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

SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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

	Commentator	Position	Comment	Committee Response
			<p>Remove 'for developmentally disabled children' to be inclusive of regional center services such as Early Start for children with developmental <i>delay</i>.</p> <p>It may be better to separate information related to KinGAP extended benefits from foster care extended benefits. For KinGAP, it can mention the 2 requirements, i.e., 16 or older at the time child entered KinGAP or having a disability.</p> <p>This section should include information about the Approved Relative Caregiver (ARC) program, and reflect that relative guardians may be eligible to receive foster care or ARC payments if jurisdiction has to remain open.</p>	<p>that that part applies and is not preempted by provisions of the Welfare and Institutions Code or the juvenile rules of court. Part 4 includes statutes that establish the powers and duties of guardian. The Judicial Council probate forms that implement the requirements of part 4 could therefore apply to juvenile court guardianships. In addition to the forms mentioned by the commentator, a newly appointed guardian would benefit from receiving and reading a copy of form GC-248, <i>Duties of Guardian</i>, regardless of jurisdiction of the court of appointment. Nevertheless, the committee has replaced the references to forms GC-079, GC-080, and GC-085 with a reference to form JV-180.</p> <p>The committee has replaced “for developmentally disabled children” with “developmental delays or disabilities.”</p> <p>The committee has added a section about extended benefits to the end of the form, including separate information about eligibility for extended KinGAP. See also the committee’s response to this commentator’s last comment, below.</p> <p>The committee has revised its recommendation to add a paragraph about the ARC program. See the committee’s response to this commentator’s last comment, below.</p>

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>It should be noted, however, that state KinGAP is an option when a child does not qualify for federal KinGAP. KinGAP allows a family to close their case, which should offer a better sense of normalcy for children/families when it is otherwise safe and appropriate to do so.</p> <p>You may want to add how to obtain the services and whom to contact.</p> <p>Related guardianships are not eligible for transitional housing services if less than 16 years when entered KinGAP.</p> <p>In some situations, they may receive both, or Social Security/SSI may be the first option.</p> <p>There are many information left out that may be important for a prospective legal guardian to know such as tax implications, name change, required RFA reassessments for foster care, etc. However, it is a delicate balance between providing comprehensive advisements and the length of the Pamphlet, as an outside person may find it overwhelming to have all that information. An option would be to hyperlink some of the information and direct them to go to appropriate materials/websites such as ILP,</p>	<p>The information on the form does not foreclose this option. For more detail, please see the committee’s response to this commentator’s last comment, below.</p> <p>The committee believes that the appropriate agencies and contact information will vary by county. The committee has therefore inserted blank space at the end of the form where each county can identify the appropriate local agencies and provide their contact information.</p> <p>See the committee’s response to this commentator’s last comment, below.</p> <p>See the committee’s response to this commentator’s last comment, below.</p> <p>The committee recognizes that this form does not provide exhaustive information to a prospective guardian. As the commentator suggests, the requirements applying to funding eligibility, resource family approval, etc., are too complex and voluminous to explain properly in a short form of this type. The committee has attempted to provide enough information to make a prospective guardian aware of the issues to be considered, and has advised the prospective guardian to contact the child’s social worker or probation officer, a</p>

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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

	Commentator	Position	Comment	Committee Response
			etc. Another example: LA County has recently updated the DCFS 5620 that has comparisons of the different permanency plans. If CDSS or Judicial Council wants to adopt a version of it, commits to regularly updating the information, and post in a public website, perhaps they can then hyperlink and be able to shorten this pamphlet.	lawyer, or the appropriate local agency, as identified at the end of the form, to find out what kind of benefits might be available in their specific circumstances.
3.	County of Santa Clara Office of the County Counsel by Hilary Kerrigan, Deputy County Counsel	AM	On page 9 of the guardianship pamphlet, it advises that the guardian will need to use form GC-085 to seek the court’s permission to move the child out of state. This is in conflict with the advisement at the bottom of the JV-330 form, which states that the guardian must use form JV-180 to request that the child be allowed to move out of state.	The committee appreciates the suggestion and has modified its recommendation to remove the reference to form GC-085.
4.	Executive Committee, Family Law Section (FLEXCOM) California Lawyers Association by Stephen D. Hamilton, Arroyo Grande & Saul Bercovitch, San Francisco	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal. Providing current and prospective guardians with clarity in both the Letters of Guardianship and the Information Pamphlet is important for long-term stability of the guardianship. We also offer some comments below with an eye toward strengthening an already sound proposal. a. On page 6, in the first paragraph under the heading “How to Become the Legal Guardian of a Child in a Juvenile Court Case,” we recommend the first sentence be rewritten to state: “The juvenile court decides petitions, filed by social workers or probation officers,	The committee appreciates FLEXCOM’s comments. The committee agrees with the commentator’s analysis of the law and has modified its recommendation to clarify that removal is not always the agency’s goal. Nevertheless, the committee believes that keeping the form focused on the consequences of removal is appropriate.

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>asking the court to adjudge a child a victim of abuse, neglect, or abandonment.” The language proposed in the Invitation to Comment is potentially confusing, given the nature of the juvenile court proceedings. That language suggests the petition is filed in order to remove a child. This language should be changed for two reasons. First, the child welfare agency does not always want a child removed when it files a petition. Second, the petition is not what causes removal. A removal can occur only during a disposition hearing, which happens after a court sustains a petition.</p> <p>b. The section headers at the bottom of page 7 and the top of page 8 should not be changed. In the current version of the JV-350 they read “Difference Between Guardianship and Adoption” and “Difference Between Guardianship and Long-Term Foster Care.” We believe the current phrasing is easier for proposed guardians to understand.</p> <p>c. Near the bottom of page 11, in the paragraph that starts with the word NOTE in bold font, a quotation mark is needed after the phrase “permanent connection.”</p> <p>d. On Page 12, a proposed section header reads “If the Child is not related to you.” We believe this proposed header can be confusing for guardians that are not considered relatives, under a commonly held definition of the term.</p>	<p>This form is directed to prospective guardians. Absent parental consent, the court will only consider appointing a guardian if the child has been removed from the parent’s physical custody and the court determines that the child cannot return home.</p> <p>The committee has revised these headings to make them easier to understand.</p> <p>The committee has addressed this concern through the reformatting process.</p> <p>The committee recognizes that the legal definition of “relative” for purposes of juvenile court guardianships is confusing. The committee has removed the extensive definition of “relative.” It has added an advisement to prospective guardians</p>

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>As noted on page 11, California law defines “relative”—for purposes of legal guardianships—broadly to include non-related caregivers that have developed a substantial connection with the child. A relative meeting this standard might be confused about the disparate language on pages 11 and 12. To remedy this problem, we recommend adding a sentence at the beginning of the paragraph that reads: “This section applies if you do not meet the definition of a ‘relative’ found on page 11.”</p> <p>e. On Page 12, we believe the information on Independent Living Services eligibility should be modified. It says that a child living with a non-related guardian may qualify for independent living services beginning at age 16. This is true, but only if the guardianship was ordered on or after the child’s 18th birthday. See Welfare and Institutions Code section 10609.45. The language in this paragraph should be amended to include that caveat.</p>	<p>that the law defines more people than they might think as relatives and suggests that they ask the child’s social worker or probation officer or a lawyer whether they qualify as a relative.</p> <p>The committee understands section 10609.45(b) to restrict eligibility for ILP services to children whose guardianships were ordered after their <i>eighth</i> birthdays. Section 10609.45(a) appears to include additional restrictions on eligibility. The committee has modified its recommendation to indicate that <i>most</i> children in nonrelative guardianships can receive ILP funding and services.</p>
5.	Orange County Bar Association Newport Beach by Nikki P. Miliband, President	AM	<p>The proposal sufficiently meets the purpose to provide information to proposed legal guardians, in language easily understood, about the nature of a legal guardianship and the rights and obligations of a legal guardian.</p> <p>The Important Notice on page 2 of the JV-330 should be clarified by rewording it to read “...or adoption by you or adoption by another person. The present wording could be interpreted to mean the guardianship could be</p>	<p>The committee appreciates the bar association’s comments.</p> <p>The committee has revised the language of the notice to avoid this possible confusion.</p>

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>ended “by you or by another person.”</p> <p>The section in the Guardianship Pamphlet (Juvenile Court) entitled “Medical Care” should be clarified to indicate the need to get court approval may vary depending upon whether or not the legal guardianship is part of an open dependency case, as opposed to those cases in which dependency jurisdiction has been terminated.</p>	<p>The committee understands that many factors (e.g., the child’s age and maturity, the nature of the procedure or treatment) and statutory provisions (see, e.g., Fam. Code, §§ 6920–6929; Prob. Code, §§ 2353, 2356, 2357) govern a child’s authority to consent to medical care and the parent’s or guardian’s authority to compel medical treatment against the child’s wishes. The committee has used the term “older and more mature children” to capture the law’s general tendency to afford those children more autonomy with respect to medical decisions.</p>
6.	Superior Court of Los Angeles County (no name provided)	AM	<p>We propose that an order be created and implemented, similar to Probate GC-240, in conjunction with the proposed forms JV 330 and JV 350. This will allow for a judicial officer to review and order appointing guardianship.</p>	<p>The committee recognizes the potential benefit of the suggested form, but believes that it is beyond the scope of this proposal. Currently, the court may use forms JV-415, <i>Findings and Orders After Dispositional Hearing</i>, and form JV-418, <i>Dispositional Attachment: Appointment of Guardian</i>, to appoint a guardian under Welfare and Institutions Code section 360(a). The court must use form JV-320, <i>Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31</i>, to make the findings and orders required to select a permanent plan, including guardianship. The development of the suggested form would require parallel revisions to those forms.</p>
7.	Superior Court of Orange County (no name provided)	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, it also informs a party in lay terms of their</p>	<p>The committee appreciates the court’s comments. No specific response is required.</p>

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>rights and responsibilities.</p> <p><i>Would proposal provide cost savings?</i> There would be minimal cost savings for the court. The savings forecasted would be in Self-Help Center resources. This lay term document and revised pamphlet would give parties more information and may reduce the need for a party to access the Self-Help Services with questions regarding juvenile guardianship.</p> <p><i>What would the implementation requirements be for courts?</i> The court would need to replace any pre-printed forms. As for the court’s case management system, codes do not need to be revised as they are already utilized in the system. Procedures would need to be revised to show the new document review requirements.</p> <p>No additional comments.</p>	<p>No specific response is required.</p> <p>No specific response is required.</p> <p>No response is required.</p>
8.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Would the proposal provide cost savings?</i> No.</p> <p><i>What would the implementation requirements be for courts?</i> Judicial officers and staff would need to be notified of the changes. Minimal additional training would be needed. If updates to minute codes were required for the updates to the Letters of Guardianship it would be minimal.</p>	<p>The committee appreciates the court’s comments. No specific response is required.</p> <p>No specific response is required.</p> <p>No specific response is required.</p>

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p> <p><i>How well would this proposal work in courts of different sizes?</i> The proposal should work well for courts of any size.</p>	<p>No specific response is required.</p> <p>No specific response is required.</p>
9.	Superior Court of San Bernardino County (no name provided)	AM	<p>Currently, the Department of Children and Family Services/County Counsel prepares and submits the “Letters of Guardianship” to the court sometimes weeks after the hearing, and the “Affirmation” by the guardian is signed. This will require County Counsel to prepare the Letters of Guardianship prior to the court hearing, and require the guardian to appear at the court hearing to sign the “letters.” CFS should also ensure that the Duties of Guardian Form GC-248 are provided to the guardian at the hearing.</p> <p>The guardian will now be required to appear at the court hearing or in person for the “Court Clerk” to witness the signing of the “Letters of Guardianship & Duties of Guardian Form GC-248.”</p> <p>The impact to the court staff would be that the “court clerk” is required to “witness” that the guardian signed the “Affirmation Portion of the</p>	<p>The committee has modified its recommendation in response to the comment by removing the requirement that the clerk witness the oath or affirmation. This will allow the prospective guardian to take the oath and acknowledge receipt of form GC-248 (<i>Duties of Guardian</i>) without attending the hearing. Because the guardian’s appointment is not effective until the oath is taken and letters are issued (Prob. Code, §§ 2300 & 2310), however, any delay in submitting the letters for issuance will postpone the guardian’s ability to act on behalf of the child and the court’s authority to dismiss the juvenile court case.</p> <p>See response above.</p> <p>See response above. The committee intends the revisions to form JV-330 to clarify existing law. To the extent the revisions modify the duties of</p>

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			<p>Letters of Guardianship” and that they were provided the “Letters of Guardianship & Duties of Guardian Form GC-248 by the Department of Children & Families Services/County Counsel.</p> <p>Additional Procedure changes and staff training would be required, as the parties are required to submit any requests to change or end the guardianship, including requests to move the child’s residence to the court on the JV-180 Request to Change Court Order along with “Notice” to the appropriate parties.</p> <ul style="list-style-type: none"> • Address changes must be submitted with the JV-180 form 15 days before the move is planned on Guardianship Form GC-079 Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward. • Notice of Address change within 30 days after the move on Guardianship Form GC-080 Change of Residence Notice and Attachment to Post Move Notice of Change of Residence of Conservatee or Ward GC-080(MA) • Address changes that are “Out of State” require the juvenile courts permission and must be submitted on Guardianship form GC-085 Petition to Fix Residence Outside the State of California and Order Fixing Residence Outside the State of California. 	<p>the department, county counsel, or the clerk of the court, the committee believes that the modifications would affect the time and place of the performance of the duties, but would not impose any new substantive duties.</p> <p>The committee has revised the forms to remove references to forms GC-079, GC-080, and GC-085. To the extent that those forms solicit information necessary to monitor changes to the child’s residence, courts may wish to develop local attachments to form JV-180 to solicit similar information.</p>
10.	Superior Court of San Diego County	AM	<i>Q: Does the proposal appropriately address the</i>	The committee appreciates the court’s comments.

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SPR18-29

Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
	by Mike Roddy, Executive Officer		<p><i>stated purpose?</i> A: Yes. Should have a form number on it.</p> <p><i>Q: Would the proposal provide cost savings?</i> A: Unknown.</p> <p><i>Q: What would the implementation requirements be for courts?</i> A: Replacing old versions of the Guardianship Pamphlet and training staff to use the new version.</p> <p><i>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> A: Yes.</p> <p><i>Q: How well would this proposal work in courts of different sizes?</i> A: It should work well no matter what the size of the court.</p> <p><i>General Comments:</i> Form JV-330 *Add reference to Probate Code sections 2351–2358 to the footer.</p> <p>Form JV-350 *Correction of typos, grammatical and technical errors. One suggestion of note: Replace “they” with “he or she” or “him or her,” as appropriate, when referring to a child.</p>	<p>The revised form is numbered JV-350-INFO.</p> <p>No specific response is required.</p> <p>No specific response is required.</p> <p>No specific response is required.</p> <p>No specific response is required.</p> <p>The committee agrees and has added the suggested reference to form JV-330.</p> <p>The committee has tried to correct all typos and grammatical or technical errors in this form. many of these were addressed in the reformatting process. The committee does not, however, recommend replacing “they” with “he or she.”</p>

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SPR18-29**Juvenile Law: Guardianship Information** (revise forms JV-330 and JV-350)

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

	Commentator	Position	Comment	Committee Response
				The committee has intentionally used gender-neutral language to implement SB 179 (Stats. 2017, ch. 853), which recognizes that persons may identify their genders as male, female, or nonbinary.
11.	Trial Court Presiding Judges Advisory Committee (TCPJAC) & Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS)	A	Revising the forms is necessary to comply with an ongoing statutory mandate, and the new form and pamphlet will give interested persons a much greater understanding of guardianships in juvenile court.	The committee appreciates the JRS's comments. No specific response is required.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: December 10, 2018

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

Probate Conservatorship and Guardianship: Qualifications and Education of Appointed Counsel

Committee or other entity submitting the proposal:

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

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

Approved by RUPRO: October 19, 2018

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.)

This proposal circulated for comment in spring 2018. In response to the wide variety of views expressed in the comments, the committee has substantially revised the proposal and requests that it circulate again for additional comment.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W19-08

Title

Probate Conservatorship and Guardianship:
Qualifications and Education of Appointed
Counsel

Action Requested

Review and submit comments by February 12,
2019

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rules 7.1101–
7.1105; repeal rule 7.1101; revise forms
GC-010 and GC-011

Proposed Effective Date

September 1, 2019

Contact

Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Proposed by

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

Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes repealing one rule of court and adopting five new rules of court to clarify and amend the minimum qualifications and education requirements for counsel appointed to represent wards and conservatees in guardianship, conservatorship, and other proceedings under division 4 of the Probate Code. The committee also proposes revising two forms for mandatory use by attorneys to certify that they meet the requirements for appointment. The amendments and revisions were suggested by courts, stakeholders, and disability rights advocates to clarify the existing requirements, resolve inconsistencies with statute, promote more effective representation, and simplify the certification process.

Background

Rule 7.1101 of the California Rules of Court was adopted, effective January 1, 2008, in response to the enactment of [section 1456](#) of the Probate Code in the Omnibus Conservatorship and Guardianship Reform Act of 2006.¹ As required by section 1456, the rule established minimum

¹ The Omnibus Act was a package of four separate bills—[Senate Bill 1116](#), [Senate Bill 1550](#), [Senate Bill 1716](#), and [Assembly Bill 1363](#)—enacted as Stats. 2006, chs. 490–493, respectively. Section 1456 was added by AB 1363, § 3. Unless otherwise specified, all further statutory references are to the Probate Code.

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

qualifications, hours and content of required education, and reporting requirements for attorneys appointed under sections 1470 and 1471 in guardianships, conservatorships, and other proceedings under division 4 of the code.

Judicial Council form GC-010 was adopted, effective March 1, 2008, to enable attorneys to certify their initial qualification for appointment, as required by rule 7.1101.² Form GC-011 was adopted, effective January 1, 2009, to enable attorneys to certify their ongoing compliance with the licensing, insurance, and annual continuing education requirements in rule 7.1101.³

The Proposal

The Probate and Mental Health Advisory Committee proposes repealing rule 7.1101 of the California Rules of Court and adopting its requirements, as amended, in five separate rules in chapter 23 of title 7 of the rules of court. As required to implement section 1456(a), current rule 7.1101 specifies minimum qualifications, the amount and subject matter of required professional education, and compliance reporting requirements for counsel appointed under sections 1470 and 1471. The proposed reorganization and amendment are intended to distinguish more clearly between the requirements applicable to attorneys appointed to represent children in guardianship proceedings and those applicable to attorneys appointed to represent adults in conservatorship proceedings.

In addition, the committee proposes substantive amendments to the existing content of the reorganized rules to specify initial attorney education requirements, tailor the subject matter of the required education more narrowly to subjects “related to conservatorships or guardianships” (§ 1456(a)(3)–(4)), and provide alternative experience requirements. The committee also proposes revising Judicial Council forms GC-010 and GC-011 to reflect the new structure and content of the rules and to simplify the procedures for attorneys to use to certify their initial qualifications and annual compliance.

Specifically, the committee proposes, effective September 1, 2019:

1. Repealing rule 7.1101 of the California Rules of Court;
2. Adopting new rule 7.1101 to specify the scope of chapter 23 of title 7 of the rules of court and define the terms used in the chapter;
3. Adopting rule 7.1102 to specify the minimum basic qualifications, experience, and initial and annual professional education required for an attorney to accept appointment under section 1470 to represent a ward or proposed ward;
4. Adopting rule 7.1103 to specify the minimum basic qualifications, experience, and initial and annual professional education required for an attorney to accept appointment under section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity;

² Judicial Council of Cal., mins. (Feb. 22, 2008), pp. 13–14.

³ Judicial Council of Cal., mins. (Oct. 24, 2008), p. 31.

5. Adopting rule 7.1104 to clarify the basis and procedure for a small court to waive the experience or education requirements in rules 7.1102 and 7.1103;
6. Adopting rule 7.1105 to specify the requirements for certifying an attorney's initial and ongoing compliance with the requirements in the rules, add a requirement to notify the court of any disciplinary action within five days, and expressly require the use of mandatory forms GC-010 and GC-011;
7. Revising *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to conform to the amended certification requirements and to simplify the certification process;
8. Revising *Annual Certification of Court-Appointed Attorney* (form GC-011) to conform to the amended certification requirements and to simplify the certification process; and
9. In the context of adopting rules 7.1101–7.1105, amending the existing substantive requirements to:
 - Distinguish the basic attorney licensing and insurance requirements from the specific experience and education requirements for each type of appointment;
 - Clarify that a court has the authority to adopt additional requirements by local rule;
 - Specify that an attorney's failure to meet the requirements in the rules, including any local rules, constitutes good cause for a court to decline to appoint that attorney, terminate the attorney's existing appointments, and remove the attorney from a list or panel of attorneys eligible to accept guardianship or conservatorship appointments in that court;
 - Add a requirement that an attorney complete three hours of approved education before accepting an appointment;
 - Specify the subject matter of applicable education related to guardianships, in rule 7.1102(g), and conservatorships, in rule 7.1103(g);
 - Narrow the experience requirements to tailor the applicable experience more specifically to guardianship or conservatorship proceedings;
 - Consolidate the requirements for appointed counsel in a private firm or legal-services provider with those for appointed counsel in a public defender's office; and
 - Add a requirement that an attorney have experience representing a person with a developmental disability before accepting appointment under section 1471(c) to represent such a person in a limited conservatorship proceeding.

Alternatives Considered

The committee considered not amending rule 7.1101. However, committee members and stakeholders reported inconsistent and sometimes inadequate experience and education of appointed counsel in conservatorship and guardianship proceedings across the state. In addition, a comparison of the existing rule to section 1456 led the committee to conclude that the rule's authorization of experience and education in general probate law and process was not fully consistent with the statute's specific focus on conservatorships and guardianships.

The committee first considered amending rule 7.1101 as a single rule; it circulated proposed amendments for public comment in spring 2018.⁴ In response to the wide range of public comments, the committee elected to divide the existing rule into several rules, the better to distinguish the experience and education needed to represent minor wards and proposed wards from the experience and education needed to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity. The committee also considered not revising forms GC-010 and GC-011, but determined that the forms needed revision to reflect the amendments to rule 7.1101 and to simplify the certification procedures.

The committee also considered proposing several additional rule amendments. First, the committee considered proposing a new, separate rule to apply only to representation in limited conservatorship proceedings, but decided to address limited conservatorships in the context of the existing rule. This approach is consistent with statute. The current statutory framework integrates limited conservatorship proceedings into the general conservatorship provisions of division 4 of the code. Unless otherwise specified, provisions addressing conservatorships apply to both general and limited conservatorships. When the Legislature has chosen to treat limited conservatorship proceedings differently, it has interpolated specific sections or subdivisions into the general statutory scheme. For example, section 1801 of the Probate Code, which describes the persons for whom a court may appoint a conservator, addresses the appointment of a limited conservator for a developmentally disabled adult in subdivision (d). In the same way, section 1471, which specifies the circumstances requiring appointment of counsel in a conservatorship proceeding, provides for mandatory appointment in a limited conservatorship proceeding in subdivision (c).

Second, the committee considered whether to specify the standards of professional conduct applicable to attorneys appointed by the court to represent (proposed) wards and conservatees. The committee determined, however, that it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules of Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the general role and duties of an attorney and to authorize any exceptions in specific circumstances. When the Judicial Council *has* entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j): court-appointed minor’s counsel is to represent “the child’s best interest”.) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance with the statute. Nothing in sections 1456, 1470, or 1471, however, specifies—or invites the council to specify—the role and duties of counsel appointed in guardianship or conservatorship proceedings. The committee has therefore declined to specify those duties in the proposed rules.

⁴ A chart with the full text of all comments received in spring 2018 and the committee’s responses is attached at pages 26–65.

Fiscal and Operational Impacts

The proposed specification of the subjects to be included in qualifying education may lead to a short-term reduction in the number of attorneys eligible to accept appointment. To the extent that this effect occurs, the committee intends the alternative experience requirements to counteract it. The amendments to the experience and education requirements try to balance the need for attorneys to have specific knowledge and experience to provide adequate representation with the need to encourage less experienced attorneys to enter the field. The proposed revisions to the certification forms would allow attorneys and courts to spend less time completing and processing those forms. The committee believes that the proposed reorganization and amendments, taken as a whole, will lead to more effective representation of wards and conservatees, better-informed judicial determinations, and fewer continued hearings.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should proposed rules 7.1102(b)(1)(B) and 7.1103(b)(1)(B) specify minimum amounts of professional liability insurance coverage?
- Should proposed rules 7.1102(b)(1)(A) and 7.1103(b)(1)(A) be expanded to authorize appointment of legal-services attorneys registered under rule 9.45?
- Should the exemption for small courts be expanded to include courts with more than four authorized judgeships? If so, what would be the appropriate upper limit?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 7.1101–7.1105, at pages 7–22
2. Forms GC-010 and GC-011, at pages 23–25
3. Spring 2018 chart of comments, at pages 26–65

4. Link A: Probate Code, § [1456](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1456),
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1456
5. Link A: Probate Code, §§ 1470–1474,
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PROB&division=4.&title=&part=1.&chapter=4.&article=

Rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105 of the California Rules of Court would be adopted, and rule 7.1101 would be repealed, effective September 1, 2019, to read:

1 **Chapter 23. ~~Court-Appointed Counsel in Probate Proceedings~~**

2
3
4 **Rule 7.1101. ~~Qualifications and continuing education required of counsel appointed~~**
5 **~~by the court in guardianships and conservatorships~~**

6
7 **(a) ~~Definitions~~**

8
9 ~~As used in this rule, the following terms have the meanings stated below:~~

- 10
11 (1) ~~“Appointed counsel” or “counsel appointed by the court” are legal counsel~~
12 ~~appointed by the court under Probate Code sections 1470 or 1471, including~~
13 ~~counsel in private practice and deputy public defenders directly responsible~~
14 ~~for the performance of legal services under the court’s appointment of a~~
15 ~~county’s public defender.~~
- 16
17 (2) ~~A “probate guardianship” or “probate conservatorship” is a guardianship or~~
18 ~~conservatorship proceeding under division 4 of the Probate Code.~~
- 19
20 (3) ~~“LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and~~
21 ~~Institutions Code section 5000 et seq.~~
- 22
23 (4) ~~An “LPS conservatorship” is a conservatorship proceeding for a gravely~~
24 ~~disabled person under chapter 3 of the LPS Act, Welfare and Institutions~~
25 ~~Code sections 5350–5371.~~
- 26
27 (5) ~~A “contested matter” in a probate or LPS conservatorship proceeding is a~~
28 ~~matter that requires a noticed hearing and in which written objections are~~
29 ~~filed by any party or made by the conservatee or proposed conservatee orally~~
30 ~~in open court.~~
- 31
32 (6) ~~“Counsel in private practice” includes attorneys employed by or performing~~
33 ~~services under contracts with nonprofit organizations.~~

34
35 **(b) ~~Qualifications of appointed counsel in private practice~~**

36
37 ~~Except as provided in this rule, each counsel in private practice appointed by the~~
38 ~~court on or after January 1, 2008, must be an active member of the State Bar of~~
39 ~~California for at least three years immediately before the date of appointment, with~~
40 ~~no discipline imposed within the 12 months immediately preceding any date of~~
41 ~~availability for appointment after January 1, 2008; and~~
42

1 (1) *Appointments to represent minors in guardianships*

2
3 For an appointment to represent a minor in a guardianship:

4
5 (A) ~~Within the five years immediately before the date of first availability~~
6 ~~for appointment after January 1, 2008, must have represented at least~~
7 ~~three wards or proposed wards in probate guardianships, three children~~
8 ~~in juvenile court dependency or delinquency proceedings, or three~~
9 ~~children in custody proceedings under the Family Code; or~~

10
11 (B) ~~At the time of appointment, must be qualified:~~

12
13 (i) ~~For appointments to represent children in juvenile dependency~~
14 ~~proceedings under rule 5.660 and the court's local rules~~
15 ~~governing court-appointed juvenile court dependency counsel; or~~

16
17 (ii) ~~For appointments to represent children in custody proceedings~~
18 ~~under the Family Code under rule 5.242, including the alternative~~
19 ~~experience requirements of rule 5.242(g).~~

20
21 (C) ~~Except as provided in (f)(2), counsel qualified for appointments in~~
22 ~~guardianships under (B) must satisfy the continuing education~~
23 ~~requirements of this rule in addition to the education or training~~
24 ~~requirements of the rules mentioned in (B).~~

25
26 (2) *Appointments to represent conservatees or proposed conservatees*

27
28 For an appointment to represent a conservatee or a proposed conservatee,
29 within the five years immediately before the date of first availability for
30 appointment after January 1, 2008, counsel in private practice must have:

31
32 (A) ~~Represented at least three conservatees or proposed conservatees in~~
33 ~~either probate or LPS conservatorships; or~~

34
35 (B) ~~Completed any three of the following five tasks:~~

36
37 (i) ~~Represented petitioners for the appointment of a conservator at~~
38 ~~commencement of three probate conservatorship proceedings,~~
39 ~~from initial contact with the petitioner through the hearing and~~
40 ~~issuance of Letters of Conservatorship;~~

41
42 (ii) ~~Represented a petitioner, a conservatee or a proposed~~
43 ~~conservatee, or an interested third party in two contested probate~~

1 or LPS conservatorship matters. A contested matter that qualifies
2 under this item and also qualifies under (i) may be applied toward
3 satisfaction of both items;
4

5 (iii) Represented a party for whom the court could appoint legal
6 counsel in a total of three matters described in Probate Code
7 sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
8

9 (iv) Represented fiduciaries in three separate cases for settlement of a
10 court filed account and report, through filing, hearing, and
11 settlement, in any combination of probate conservatorships or
12 guardianships, decedent's estates, or trust proceedings under
13 division 9 of the Probate Code; or
14

15 (v) Prepared five wills or trusts, five durable powers of attorney for
16 health care, and five durable powers of attorney for asset
17 management.
18

19 (3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must
20 also be covered by professional liability insurance satisfactory to the court in
21 the amount of at least \$100,000 per claim and \$300,000 per year.
22

23 **(e) Qualifications of deputy public defenders performing legal services on court**
24 **appointments of the public defender**
25

26 (1) Except as provided in this rule, beginning on January 1, 2008, each county
27 deputy public defender with direct responsibility for the performance of legal
28 services in a particular case on the appointment of the county public defender
29 under Probate Code sections 1470 or 1471 must be an active member of the
30 State Bar of California for at least three years immediately before the date of
31 appointment; and either
32

33 (A) Satisfy the experience requirements for private counsel in (b)(1) for
34 appointments in guardianships or (b)(2) for appointments in
35 conservatorships; or
36

37 (B) Have a minimum of three years' experience representing minors in
38 juvenile dependency or delinquency proceedings or patients in
39 postcertification judicial proceedings or conservatorships under the
40 LPS Act.
41

42 (2) A deputy public defender qualified under (1) must also be covered by
43 professional liability insurance satisfactory to the court in the amount of at

1 least \$100,000 per claim and \$300,000 per year, or be covered for
2 professional liability at an equivalent level by a self-insurance program for
3 the professional employees of his or her county.
4

- 5 (3) A deputy public defender who is not qualified under this rule may
6 periodically substitute for a qualified deputy public defender with direct
7 responsibility for the performance of legal services in a particular case. In
8 that event, the county public defender or his or her designee, who may be the
9 qualified supervisor, must certify to the court that the substitute deputy is
10 working under the direct supervision of a deputy public defender who is
11 qualified under this rule.
12

13 **(d) Transitional provisions on qualifications**
14

- 15 (1) Counsel appointed before January 1, 2008, may continue to represent their
16 clients through March 2008, whether or not they are qualified under (b) or
17 (c). After March 2008, through conclusion of these matters, the court may
18 retain or replace appointed counsel who are not qualified under (b) or (c) or
19 may appoint qualified co-counsel to assist them.
20
- 21 (2) In January, February, and March 2008, the court may appoint counsel in new
22 matters who have not filed the certification of qualifications required under
23 (h) at the time of appointment but must replace counsel appointed under this
24 paragraph who have not filed the certificate before April 1, 2008.
25

26 **(e) Exemption for small courts**
27

- 28 (1) Except as provided in (2) and (3), the qualifications required under (b) or (c)
29 may be waived by a court with four or fewer authorized judges if it cannot
30 find qualified counsel or for other grounds of hardship.
31
- 32 (2) A court described in (1) may, without a waiver, appoint counsel in private
33 practice who do not satisfy the insurance requirements of (b)(3) if counsel
34 demonstrate to the court that they are adequately self-insured.
35
- 36 (3) A court may not waive or disregard the self-insurance requirements of (c)(2)
37 applicable to deputy public defenders.
38
- 39 (4) A court waiving the qualifications required under (b) or (c) must make
40 express written findings showing the circumstances supporting the waiver
41 and disclosing all alternatives considered, including appointment of qualified
42 counsel from adjacent counties and other alternatives not selected.
43

1 **(f) Continuing education of appointed counsel**

- 2
- 3 (1) Except as provided in (2), beginning on January 1, 2008, counsel appointed
4 by the court must complete three hours of education each calendar year that
5 qualifies for Minimum Continuing Legal Education credit for State Bar-
6 certified specialists in estate planning, trust, and probate law.
- 7
- 8 (2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and
9 who are appointed to represent minors in guardianships of the person only
10 may satisfy the continuing education requirements of this rule by satisfying
11 the annual education and training required under rule 5.242(d) or the
12 continuing education required under rule 5.660(d)(3).

13

14 **(g) Additional court-imposed qualifications, education, and other requirements**

15

16 The qualifications in (b) and (c) and the continuing education requirement in (f) are
17 minimums. A court may establish higher qualification or continuing education
18 requirements, including insurance requirements; require initial education or
19 training; and impose other requirements, including an application by private
20 counsel.

21

22 **(h) Initial certification of qualifications; annual post-qualification reports and**
23 **certifications**

- 24
- 25 (1) Each counsel appointed or eligible for appointment by the court before
26 January 1, 2008, including deputy public defenders, must certify to the court
27 in writing before April 1, 2008, that he or she satisfies the qualifications
28 under (b) or (c) to be eligible for a new appointment on or after that date.
- 29
- 30 (2) After March 2008, each counsel must certify to the court that he or she is
31 qualified under (b) or (c) before becoming eligible for an appointment under
32 this rule.
- 33
- 34 (3) Each counsel appointed or eligible for appointment by the court under this
35 rule must immediately advise the court of the imposition of any State Bar
36 discipline.
- 37
- 38 (4) Beginning in 2009, each appointed counsel must certify to the court before
39 the end of March of each year that:
- 40
- 41 (A) His or her history of State Bar discipline and professional liability
42 insurance coverage or, if appointed by a court with four or fewer
43 authorized judges under (c)(2), the adequacy of his or her self-

1 insurance, either has or has not changed since the date of his or her
2 qualification certification or last annual certification; and

3
4 (B) He or she has completed the continuing education required for the
5 preceding calendar year.

6
7 (5) Annual certifications required under this subdivision showing changes in
8 State Bar disciplinary history, professional liability insurance coverage, or
9 adequacy of self insurance must include descriptions of the changes.

10
11 (6) Certifications required under this subdivision must be submitted to the court
12 but are not to be filed or lodged in a case file.

13
14 **(f) Reporting**

15
16 The Judicial Council may require courts to report appointed counsel's
17 qualifications and completion of continuing education required by this rule to
18 ensure compliance with Probate Code section 1456.

19
20
21 **Rule 7.1101. Scope and Definitions**

22
23 **(a) Scope**

24
25 The rules in this chapter establish minimum experience, education, and certification
26 requirements that an attorney must meet as a condition of accepting court
27 appointment under Probate Code section 1470 or 1471 to represent a ward,
28 proposed ward, conservatee, proposed conservatee, or person alleged to lack legal
29 capacity as counsel of record in a proceeding under division 4 of the Probate Code.
30 The rules in this chapter do not apply to retained counsel.

31
32 **(b) Definitions**

33
34 The following terms are used in this chapter, as defined below:

35
36 (1) “Appointed counsel,” “appointed attorney,” “counsel appointed by the court,”
37 or “attorney appointed by the court” mean an attorney appointed as counsel
38 of record to represent a ward or proposed ward, a conservatee or proposed
39 conservatee, or a person alleged to lack legal capacity in a proceeding under
40 division 4 of the Probate Code.

- 1 (2) “Counsel of record” means an attorney who assumes personal responsibility
2 for the performance of legal services for a client in a judicial proceeding
3 under California law, regardless of whether:
4
5 (A) The attorney is a sole practitioner or works for a private law firm, a
6 legal services organization, or a public agency; or
7
8 (B) The attorney is appointed or retained.
9
10 (3) “Probate guardianship” means any proceeding related to the establishment,
11 supervision, modification, or termination of a general or temporary
12 guardianship under division 4 of the Probate Code.
13
14 (4) “Probate conservatorship” means any proceeding related to the establishment,
15 supervision, modification, or termination of a general or temporary
16 conservatorship under division 4 of the Probate Code.
17
18 (5) “Limited conservatorship” means any proceeding to establish a limited
19 conservatorship—including, as provided in Probate Code section 1431, a
20 proceeding to modify or revoke the powers or duties of a limited
21 conservator—for an adult with a developmental disability under division 4 of
22 the Probate Code.
23
24 (6) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act (Welf. & Inst.
25 Code, § 5000 et seq.), which provides for involuntary mental health treatment
26 and conservatorship for persons who are gravely disabled as the result of a
27 mental disorder.
28
29 (7) “LPS conservatorship” means a conservatorship proceeding for a gravely
30 disabled person under chapter 3 of the LPS Act. (Welf. & Inst. Code,
31 §§ 5350–5372.)
32
33 (8) A “contested matter” is a matter that requires a noticed hearing and in which
34 an objection is filed in writing before or at the hearing or made orally at the
35 hearing by any person entitled to appear at the hearing and support or oppose
36 the petition.
37
38 (9) “Trial” means the determination of one or more disputed issues of fact by
39 means of an evidentiary hearing.
40
41

1 **Rule 7.1102. Minimum qualifications and education of counsel appointed to**
2 **represent wards or proposed wards (§§ 1456, 1470)**

3
4 **(a) Scope**

5
6 This rule establishes minimum qualifications and education requirements that an
7 attorney must meet as a condition of accepting appointment under Probate Code
8 section 1470 as counsel of record for a ward or a proposed ward in a guardianship
9 or other proceeding under division 4 of that code.

10
11 **(b) General requirements**

12
13 (1) To accept appointment under Probate Code section 1470 as counsel of record
14 for a ward or proposed ward, an attorney must:

15
16 (A) Be an active member in good standing of the State Bar of California;

17
18 (B) Have demonstrated to the appointing court that the attorney or the
19 attorney's firm or employer has professional liability insurance with
20 coverage limits no lower than \$100,000 per claim and \$300,000 per
21 year, or is adequately self-insured;

22
23 (C) Have satisfied the experience and education requirements of this rule;
24 and

25
26 (D) Have satisfied any additional experience, education, or procedural
27 requirements—such as procedures for placement on a panel of
28 attorneys eligible for appointment—established by local rule.

29
30 (2) An attorney's failure to meet any requirement in this rule, rule 7.1105, or any
31 applicable local rule constitutes good cause for the court to decline to appoint
32 that attorney, terminate the attorney's existing appointments, and remove the
33 attorney from any panel or list of attorneys approved to accept appointment.

34
35 **(c) Minimum experience requirements**

36
37 Except as provided in (d), an attorney who accepts appointment on or after January
38 1, 2021, as counsel of record for a ward or proposed ward must satisfy the
39 experience requirements in (1), (2), or (3).

40
41 (1) Within the five years immediately before first accepting appointment after
42 January 1, 2021, the attorney must have represented a petitioner or an
43 objector at the beginning of at least three probate guardianship proceedings,

1 including at least one contested matter or trial, from initial contact with the
2 client through the conclusion of the hearing on the petition.

3
4 (2) Within the five years immediately before first accepting appointment after
5 January 1, 2021, the attorney must have represented a minor child in at least
6 three of any one or combination of the following:

7
8 (A) A probate guardianship proceeding in which the child was the ward or
9 proposed ward;

10
11 (B) A juvenile court proceeding in which the child was the subject of a
12 petition to declare the child a dependent of the court; or

13
14 (C) A family law proceeding in which custody or visitation of the child was
15 the subject of a petition or request for order.

16
17 (3) At the time of appointment, the attorney must satisfy the experience
18 requirements:

19
20 (A) In rule 5.660(d) and any applicable local rules for appointment to
21 represent a minor child or nonminor dependent in a child welfare
22 proceeding; or

23
24 (B) In rule 5.242(f) for appointment to represent a minor child in a custody
25 or visitation proceeding under the Family Code.

26
27 **(d) Alternative experience requirements**

28
29 An attorney who does not personally meet the experience requirements in (c) or the
30 initial education requirements in (e) may nevertheless accept appointment under
31 Probate Code section 1470 to represent a ward or proposed ward if the attorney:

32
33 (1) Works for an attorney, a private law firm, a qualifying legal services
34 provider, or a government agency approved by the presiding judge of the
35 superior court or the supervising judge of the probate court, if one has been
36 designated, to accept appointment under Probate Code section 1470 to
37 represent wards or proposed wards; and

38
39 (2) Is supervised by an attorney who has personally satisfied the requirements in
40 (c).

41

1 **(e) Initial education requirements**

2
3 To accept initial appointment under Probate Code section 1470 to represent a ward
4 or proposed ward on or after January 1, 2021, an attorney must have completed, in
5 the preceding 12 months, at least three hours of professional education approved by
6 the State Bar of California for Minimum Continuing Legal Education (MCLE)
7 credit in the subjects listed in (g).
8

9 **(f) Annual education**

10
11 (1) Except as provided in (2), each calendar year an attorney must, as a condition
12 of maintaining any existing appointment or accepting a new appointment the
13 following year, complete at least three hours of professional education
14 approved by the State Bar of California for MCLE credit in one or more of
15 the subjects listed in (g).
16

17 (2) An attorney who satisfies the experience requirements in (c) and the annual
18 education requirements of rule 5.242 or the continuing education
19 requirements of rule 5.660(d)(3) but does not satisfy the requirements in (1)
20 may accept appointment to represent a ward or proposed ward in a
21 guardianship of the person, but not in a guardianship of the estate.
22

23 **(g) Subject matter**

24
25 Education in the following subjects may be used to satisfy this rule’s initial and
26 annual education requirements:
27

- 28 (1) Statutes, rules of court, and case law applying to guardianships and child
29 custody and visitation proceedings;
30
31 (2) The rights of children and parents under state and federal law, including the
32 Indian Child Welfare Act (25 U.S.C. §§ 1901–1963);
33
34 (3) The stages of child development;
35
36 (4) Techniques for communicating with a child at various stages of development,
37 ascertaining the child’s views, and presenting those views to the court;
38
39 (5) Requirements of estate management, including proper recordkeeping and
40 accounting practices; and
41
42 (6) Special considerations for representing a child, including:
43

1 (A) Recognizing and understanding the effects of child abuse and neglect,
2 family violence, developmental disabilities, and mental health disorders
3 in minor children; and

4
5 (B) Effectively identifying and collaborating with professionals in other
6 disciplines.

7
8 **(h) Education methods**

9
10 To meet the requirements in (e), (f), and (g), an attorney may use education
11 provided in person or by video, webinar, audio, or another method of distance
12 learning to satisfy the requirements of this rule.

13
14
15 **Rule 7.1103. Minimum qualifications and education of counsel appointed to**
16 **represent conservatees, proposed conservatees, and persons alleged to lack**
17 **legal capacity (§§ 1456, 1470–1471)**

18
19 **(a) Scope**

20
21 This rule establishes minimum qualifications and education requirements that an
22 attorney must meet as a condition of accepting appointment under Probate Code
23 section 1470 or 1471 as counsel of record for a conservatee, a proposed
24 conservatee, or a person alleged to lack legal capacity in a conservatorship, limited
25 conservatorship, or other proceeding under division 4 of that code.

26
27 **(b) General requirements**

28
29 (1) To accept appointment under Probate Code section 1470 or 1471 as counsel
30 of record for a conservatee, proposed conservatee, or person alleged to lack
31 legal capacity, an attorney must:

32
33 (A) Be an active member in good standing of the State Bar of California;

34
35 (B) Have demonstrated to the appointing court that the attorney or the
36 attorney’s firm or employer has professional liability insurance with
37 coverage limits no lower than \$100,000 per claim and \$300,000 per
38 year, or is adequately self-insured;

39
40 (C) Have satisfied the experience and education requirements of this rule;
41 and

1 (D) Have satisfied any additional experience, education, or procedural
2 requirements—such as procedures for placement on a panel of
3 attorneys eligible for appointment—established by local rule.

4
5 (2) An attorney’s failure to meet any requirement in this rule, rule 7.1105, or any
6 applicable local rule constitutes good cause for the court to decline to appoint
7 that attorney, terminate the attorney’s existing appointments, and remove the
8 attorney from any panel or list of attorneys approved to accept appointment.

9
10 (c) **Minimum experience requirements**

11
12 Except as provided in (d), an attorney who accepts appointment on or after January
13 1, 2021, as counsel of record for a conservatee, proposed conservatee, or person
14 alleged to lack legal capacity must satisfy the experience requirements in (1) or (2).

15
16 (1) Within the five years immediately before first accepting appointment after
17 January 1, 2021, the attorney must have represented at least three proposed
18 conservatees in at least three separate proceedings for appointment of a
19 conservator under the Probate Code or the LPS Act, including at least one
20 contested matter or trial; or

21
22 (2) Within the five years immediately before first accepting appointment after
23 January 1, 2021, the attorney must have completed both (A) and (B), as
24 follows:

25
26 (A) Represented a petitioner or an objector to the petition at the beginning
27 of at least two probate conservatorship proceedings, including at least
28 one contested matter or trial, from initial contact with the client through
29 the conclusion of the hearing on the petition.

30
31 (B) Represented a conservatee, proposed conservatee, or person alleged to
32 lack legal capacity in at least two separate matters, including at least
33 one contested matter or trial, under division 4 of the Probate Code or
34 under the LPS Act.

35
36 (3) To accept appointment as counsel of record for a limited conservatee or a
37 proposed limited conservatee, an attorney must have satisfied the
38 requirements in (1) or (2) in part by representing at least one adult with a
39 developmental disability in a proceeding under division 4 of the Probate
40 Code.

1 **(d) Alternative experience requirements**

2
3 An attorney who does not meet the experience requirements in (c) or the initial
4 education requirements in (e) may nevertheless accept appointment under Probate
5 Code section 1470 or 1471 if the attorney:
6

7 (1) Works for an attorney, a private law firm, a qualifying legal services provider
8 (including the organization designated by the Governor as the state protection
9 and advocacy agency, as defined in section 4900(i) of the Welfare and
10 Institutions Code), or a government agency approved by the presiding judge
11 of the superior court or the supervising judge of the probate court, if one has
12 been designated, to accept appointment to represent conservatees, proposed
13 conservatees, and persons alleged to lack legal capacity; and
14

15 (2) Is supervised by an attorney who has personally satisfied the requirements in
16 (c).
17

18 **(e) Initial education requirements**

19
20 To accept initial appointment under Probate Code section 1470 or 1471 to represent
21 a conservatee, proposed conservatee, or person alleged to lack legal capacity on or
22 after January 1, 2021, an attorney must have completed, in the preceding 12
23 months, at least three hours of professional education approved by the State Bar of
24 California for Minimum Continuing Legal Education credit in the subjects listed in
25 (g).
26

27 **(f) Annual education requirements**

28
29 Each calendar year, an attorney must, as a condition of maintaining an existing
30 appointment or accepting a new appointment the following year, complete at least
31 three hours of professional education approved by the State Bar of California for
32 MCLE credit in one or more of the subjects listed in (g).
33

34 **(g) Subject matter**

35
36 Education in the following subjects, provided in accordance with (i) and approved
37 by the appointing court, may be used to satisfy this rule's initial and annual
38 education requirements:
39

40 (1) Statutes, rules of court, and case law applying to general and limited
41 conservatorship proceedings;
42

1 (2) The rights of conservatees, persons alleged to lack legal capacity, and persons
2 with disabilities under state and federal law, including the Americans with
3 Disabilities Act (42 U.S.C. §§ 12101–12213);
4

5 (3) A lawyer’s ethical duties to a client, including a client who has or may have
6 diminished functional ability, under the California Rules of Professional
7 Conduct and other applicable law;
8

9 (4) Techniques for communicating with an older client or a client with a
10 disability, ascertaining the client’s wishes, and advocating for those wishes in
11 court;
12

13 (5) Requirements of estate management, including proper recordkeeping and
14 accounting practices; and
15

16 (6) Special considerations for representing an older adult or a person with a
17 disability, including the following:
18

19 (A) Risk factors that make a person vulnerable to undue influence, physical
20 and financial abuse, and neglect;
21

22 (B) Effects of physical, intellectual, and developmental disabilities; mental
23 health disorders; major neurocognitive disorders (including dementia);
24 and substance use disorders on a person’s ability to perform activities
25 of daily living;
26

27 (C) Identification of and collaboration with professionals from other
28 disciplines, including staff of the local regional center for the
29 developmentally disabled, if applicable; and
30

31 (D) Identification of less-restrictive alternatives to conservatorship,
32 including supported decisionmaking, and of available local options for
33 less-restrictive supports, behavioral intervention, outpatient treatment,
34 or, if necessary, residential placement.
35

36 **(h) Education methods**
37

38 To meet the requirements in (e), (f), and (g), an attorney may use education
39 provided in person or by video, webinar, audio, or another method of distance
40 learning to satisfy the requirements of this rule.
41
42
43

1 **Rule 7.1104. Exemption for small courts**

2
3 **(a) Waiver**

4
5 A court with four or fewer authorized judges may waive any of the requirements in
6 rule 7.1102(c)–(g) or 7.1103(c)–(g) if it cannot find qualified counsel or because of
7 other hardship.

8
9 **(b) Written findings**

10
11 A court that waives any of the requirements in rule 7.1102(c)–(g) or 7.1103(c)–(g)
12 must make express written findings describing the hardship supporting the waiver
13 and all alternatives—such as appointment of qualified counsel from an adjacent
14 county—that were considered and not selected.

15
16 **(c) Standing Order**

17
18 The court may execute a general waiver under this rule as a standing order. A court
19 that chooses to use a general waiver must execute a new waiver each calendar year.
20
21

22 **Rule 7.1105. Attorney certification**

23
24 **(a) Initial certification**

25
26 Before accepting an appointment under Probate Code section 1470 or 1471 after
27 January 1, 2021, an attorney must certify on form GC-010 that the attorney meets
28 the requirements in rule 7.1102(b) or 7.1103(b) and, unless appointed under rule
29 7.1104, all applicable requirements in rule 7.1102(c)–(e), rule 7.1103(c)–(e), or
30 both.

31
32 **(b) Annual certification**

33
34 To maintain existing appointments and to accept new appointments under Probate
35 Code section 1470 or 1471, an attorney who has submitted an initial certification
36 must certify on form GC-011 no later than March 31 of each subsequent year that,
37 since the attorney’s last submitted certification:

- 38
39 (1) The State Bar has taken no disciplinary action against the attorney;
40
41 (2) The terms and coverage limits of the attorney’s professional liability
42 insurance or the level of self-insurance has not decreased; and
43

1 (3) The attorney has completed the annual education required for the preceding
2 calendar year.

3
4 **(c) Notification of disciplinary action or change in coverage**

5
6 (1) An attorney who has submitted a certification under (a) or (b) must notify the
7 court within five court days of any disciplinary action taken against the
8 attorney by the State Bar of California since the attorney's last submitted
9 certification. The notification must describe the charges, disposition, and
10 terms of any reproof, probation, or suspension.

11
12 (2) If, since an attorney's last submitted certification, the attorney has been
13 subject to State Bar disciplinary action, or the terms and coverage limits of
14 the attorney's professional liability insurance or self-insurance have
15 decreased and the attorney has not otherwise notified the court, the attorney's
16 annual certification under (b) must include a description of each action or
17 change.

18
19 **(d) Documentation**

20
21 A court to which an attorney has submitted a certification under this rule may
22 require the attorney to submit documentation to support any statement in the
23 certification.

24
25 **(e) Confidentiality**

26
27 The certifications required by this rule and any supporting documentation must be
28 submitted to and maintained confidentially by the court. They must not be filed or
29 lodged in a case file.

ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	DO NOT FILE OR LODGE IN CASE FILE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
INITIAL CERTIFICATION OF QUALIFICATION FOR APPOINTMENT IN <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> CONSERVATORSHIP	

NOTICE TO ATTORNEY

1. Before you may accept appointment as counsel of record in a guardianship, conservatorship, or other proceeding under division 4 of the Probate Code, you must certify to the court on this form that you meet the applicable requirements in rule 7.1102 or 7.1103 of the California Rules of Court.
2. Under the circumstances specified in rule 7.1104, a court with four or fewer authorized judges may waive the education and experience requirements in rules 7.1102 and 7.1103.

I certify that *(check all boxes that apply)*

1. I am a member in good standing of the State Bar of California. *(Date of admission):*
2. a. I am covered by professional liability insurance up to the amount of \$ _____ per claim and \$ _____ per year.
My insurer is *(specify)*:
or
b. I am self-insured or covered by a self-insurance program through my firm, employer, or government agency.
3. I am qualified to accept appointment under Probate Code section 1470 to represent a ward or proposed ward in a guardianship or other proceeding under division 4 of the Probate Code, in that
 - a. I have satisfied the experience and initial education requirements in rule 7.1102(c) and (e).
or
 I have satisfied the alternative experience requirements in rule 7.1102(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
4. I am qualified to accept appointment under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity in a proceeding under division 4 of the Probate Code, in that
 - a. I have satisfied the experience and initial education requirements in rule 7.1103(c) and (e).
or
 I have satisfied the alternative experience requirements in rule 7.1103(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
5. I am qualified to accept appointment under Probate Code section 1471(c) to represent a limited conservatee or proposed limited conservatee in a proceeding to establish a limited conservatorship as defined in Probate Code section 1431, in that
 - a. in the course of satisfying the requirements in 4, I have satisfied the specific experience requirement in rule 7.1103(c)(3).
or
 I have satisfied the alternative experience requirements in rule 7.1103(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
6. I have satisfied the general requirements in 1 and 2, but I have not satisfied the requirements in 3, 4, or 5. My qualifications are described in 7. I ask the court, which has four or fewer authorized judges, to waive the unsatisfied requirements as authorized by rule 7.1104 and consider me for appointment under Probate Code section 1470 or 1471.

Additional space provided and signature required on page 2.

ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	DO NOT FILE OR LODGE IN CASE FILE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ANNUAL CERTIFICATION OF QUALIFICATION FOR APPOINTMENT	

NOTICE TO COURT-APPOINTED ATTORNEYS IN CONSERVATORSHIPS OR GUARDIANSHIPS

1. Each calendar year, beginning in 2020, you must complete three hours of education approved by the State Bar for Minimum Continuing Legal Education (MCLE) credit in one or more of the subjects listed in California Rules of Court, rule 7.1102(g), for appointment to represent wards or proposed wards in guardianships, or one or more of the subjects listed in rule 7.1103(g), for appointment to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity.
2. No later than March 31 of each calendar year, beginning in 2021, you must certify to the court on this form that (1) the State Bar has taken no disciplinary action against you, (2) your professional liability insurance coverage or level of self-insurance has not decreased since you filed your most recent previous certification, and (3) you completed the required annual education during the previous calendar year. If you cannot certify (1) or (2), you must describe any disciplinary action or decreases in your insurance coverage or level of self-insurance in attachments to this form. (See rule 7.1105(c).)

I certify that *(check all boxes that apply)*

1. a. the State Bar has taken no disciplinary action against me since I filed my last certification of qualification.
 b. the State Bar has taken disciplinary action against me since I filed my last certification of qualification. The charges, disposition, and terms of discipline are described in Attachment 1.
2. a. my professional liability insurance coverage or level of self-insurance has not decreased since I filed my last certification of qualification.
 b. my professional liability insurance coverage or level of self-insurance has decreased since I filed my last certification of qualification. My current insurance coverage or level of self-insurance is described in Attachment 2.
3. During calendar year _____, I completed a total of *(specify)*: _____ hours of continuing education approved for MCLE credit by the State Bar in subjects listed in rule 7.1102(g) (wards) rule 7.1103(g) (conservatees).
4. During calendar year _____, I continued to meet all other requirements imposed by local rule of court as a condition of accepting appointment.

I certify under penalty of perjury under the laws of the State of California that the foregoing statements, including statements in any attachment, are true and correct.

Date:

_____ (TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)	 _____ (SIGNATURE)
------------------------------------------------------	--------------------------

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
1.	California Advocates for Nursing Home Reform (CANHR) by Anthony Chicotel, Staff Attorney San Francisco	AM	<p><u>The rule should promote zealous advocacy by court-appointed attorneys where it can.</u></p> <p>CANHR certainly understands the desire to ensure the competence of attorneys who a court-appointed to represent conservatees. However, if the goal of the Rule is to improve conservatorship defense, the Judicial Council would best be served by promoting zealous advocacy from the attorneys who represent conservatees. In CANHR’s experience, attorneys who represent conservatees often serve their own notion of the conservatee’s best interests, foregoing their client’s wishes and fulfilling a role akin to a guardian ad litem’s. While the committee unfortunately decided not to propose standards of representation for court-appointed counsel, zealous advocacy could still be a component of the education and experience requirements at the heart of the Rule. We believe this could be done in two ways:</p> <ul style="list-style-type: none"> • Add zealous advocacy to the subject matters listed in the Rule’s subsection (g) that may be used to satisfy the MCLE 	<p>The committee appreciates CANHR’s comment and agrees that clear specification of the role and duties of counsel retained or appointed to represent a (proposed) ward or conservatee is desirable. The committee does not, however, recommend that the rules provide that specification directly. Generally speaking, it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the role and duties of an attorney and to authorize any exceptions. When the Judicial Council <i>has</i> entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j) (court-appointed minor’s counsel is to represent “the child’s best interests”).) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance by appointed counsel. Nothing in sections 1456, 1470, and 1471, however, specifies, or invites the council to specify, the role and duties of counsel in guardianship or conservatorship proceedings.</p> <p>The committee agrees with the spirit of the suggested change. The committee believes that the role and duties of an attorney toward a client</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>requirements specified in subsection (f);</p> <ul style="list-style-type: none"> • Add the representation of a conservatee in a conservatorship trial to the list of experience requirements in subsections (d) or (e). Representing a conservatee in a conservatorship trial is a good proxy for zealous advocacy and something that should be encouraged in state policy. <p><u>Add other important subjects to the options for required education.</u> In our experience, conservatees are often unnecessarily moved from their homes, drugged, and institutionalized. We would therefore like to see the subject matter listed in subsection (g) expanded to include 1) the long-term care continuum with an emphasis on less restrictive and community based options, and 2) non-pharmacological behavioral interventions.</p> <p><u>Clarify that the education and experience requirements do not apply to retained counsel.</u> The Rule applies to court-appointed counsel. Unfortunately, courts sometimes require</p>	<p>are best covered in the general legal ethics training required of all attorneys. Nevertheless, the committee has modified its recommendation to add “a lawyer’s ethical duties to a client, including a client who lacks or may lack decision-making capacity,” to the list of subjects that may be used to satisfy the rule’s education requirements.</p> <p>The committee agrees that experience representing a conservatee or proposed conservatee in at least one contested matter or trial is important and has clarified that requirement in rule 7.1103(c).</p> <p>The committee agrees that instruction in less-restrictive options to conservatorship, including supported decision making, and in local options for less-restrictive residential placement, treatment, and medication, is important and has added these to the list of subjects that may be used to satisfy the rule’s education requirements.</p> <p>The committee agrees that the rule, as authorized by section 1456, applies only to counsel</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			<p>attorneys who are retained by conservatees to complete Judicial Council form GC-010 in order to represent them. In such a case, the conservatee may be denied the right to choose their own counsel. We therefore recommend that subsection (b) include an express statement that the qualification, education, and certification requirements do not apply to attorneys who are retained or chosen by a conservatee or proposed conservatee.</p> <p><u>Provide an experience exemption for attorneys with a demonstrated proficiency in conservatorship cases.</u></p> <p>Under the current and proposed rules, I would not qualify for court appointment to represent a proposed conservatee. I have represented approximately 25 conservatees, including two trials (though none in the last three years), authored the CANHR conservatorship defense guide, review and comment on proposed legislation regarding conservatorships (including sponsorship of SB 938 (Jackson, 2016)), and routinely handle calls from people all around the state with conservatorship questions.</p> <p>The experience requirement looks as though it was written by probate attorneys for probate</p>	<p>appointed by the court under section 1470 or 1471. The committee has modified its recommendation to so indicate.</p> <p>The committee agrees that the experience requirements as circulated were too stringent and has revised them consistent with this and other recommendations. Although the committee believes that the temporal proximity of an attorney’s experience to the attorney’s appointment is critical, it recognizes that three years may be too short a time for an attorney to acquire the necessary experience. The committee has modified its recommended requirements to increase their flexibility by returning the time frame in which qualifying experience may be acquired to <i>five</i> years, tailoring the subject matter more narrowly to conservatorship proceedings, and requiring experience in only one contested proceeding or trial.</p> <p>The committee has revised the proposed alternative experience requirements in rules</p>

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SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			<p>attorneys, creating a possible Catch-22. The only way one can get the experience “necessary” to represent conservatees is either to represent conservatees without the benefit of court appointment, represent conservators, or take other kinds of probate cases. Attorneys who are just interested in representing conservatees may find it impossible to do so.</p> <p>We therefore recommend the rule include some process by which attorneys can petition the court for an exemption from the experience requirement if they can demonstrate proficiency in conservatorship defense attained through other work.</p>	<p>7.1102(d) and rule 7.1103(d) to authorize an attorney who has not personally met the experience requirements to accept appointments if supervised by an attorney who has met the experience requirements.</p> <p>The committee does not recommend authorizing an exemption based on “demonstration of proficiency” without more specificity. The legislative purpose underlying the requirement for a statewide rule seems to have been to establish minimum statewide standards. Allowing a court to appoint an attorney who demonstrates proficiency without meeting the standards would eviscerate the rule and thereby defeat the statutory purpose. The committee intends the alternative experience requirements in rule 7.1102(d) or 7.1103(d) to allow an attorney who does not yet meet the experience requirements in rule 7.1102(c) or 7.1103(c), respectively, to accept appointment under the supervision of an attorney who does.</p>
2.	<p>Disability Rights California Legal Advocacy Unit by Melinda Bird, Sr. Litigation Counsel Los Angeles</p>	AM	<p>1. Experience Requirement in Amended Rule 7.1101(e) We support the alternative experience requirements in proposed Rule 7.1101(e), but recommend an additional provision to address the unique role of the state protection and advocacy agency.</p>	<p>The committee appreciates DRC’s comment. Please see below for responses to specific concerns.</p>

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

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Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>Welfare and Institutions Code § 4901(a) establishes a state protection and advocacy agency with particular responsibilities regarding persons with disabilities. In 1978, the Governor’s office designated Disability Rights California as California’s protection and advocacy agency pursuant to Section 4901. Disability Rights California is the recipient of a special grant from the federal government to represent individuals with intellectual and developmental disabilities. Disability Rights California is also the recipient of a contract from the California Department of Developmental Services to our Office of Client’s Rights Advocacy to represent consumers served by the State’s 21 regional centers. For these reasons, attorneys with Disability Rights California have special expertise in representing people with intellectual and developmental disabilities, and would be well-suited for court appointments in conservatorship proceedings.</p> <p>However, as a state-wide organization, DRC generally and the Office of Client’s Rights Advocacy in particular may be unable to meet the direct supervision requirements in proposed Rule 7.1101(e)(2). Consequently, we request that the Judicial Council consider the following underlined text as an additional amendment to proposed Rule 7.1101(e):</p>	<p>The committee agrees with the suggestion and has added a specific reference to the state protection and advocacy agency in the rule.</p> <p>The committee agrees that the requirement of supervision by an attorney in the same organization is unduly restrictive and has removed that requirement from its recommendation. The revised recommendation allows an attorney to satisfy the alternative experience requirements if supervised by an attorney who meets the primary experience requirements. The committee also notes that the rule does not require an attorney who</p>

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SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>(e) Alternative experience requirements</p> <p>An attorney who does not meet the experience requirements in (d) may be appointed under Probate Code section 1470 or 1471 if the attorney has completed the education required in (d) and:</p> <p>(1) Works for a private law firm, a legal services organization (<u>including the state protection and advocacy organization</u>), or a public defender’s office that has been approved by the presiding judge of the local superior court or the supervising judge of the local probate court to accept appointments under Probate code section 1470 or 1471; and</p> <p>(2) Is directly supervised by an attorney working in the same firm, organization, or office who satisfies the applicable experience requirements in (d), <u>or is employed by the state protection and advocacy agency.</u></p> <p>2. Education Requirement in Amended Rule 7.1101(g) Proposed Rule 7.1101(g) sets out more tailored and specific education requirements for court-appointed counsel. We strongly support these new requirements.</p> <p>3. Modify GC-255 Form To Permit Termination of a Conservatorship or Create</p>	<p>independently meets the primary experience requirements in rule 7.1103(c) to be supervised.</p> <p>The subject matter of education that may be applied to meet the rules’ requirements is now specified in rules 7.1102(g) and 7.1103(g). No further response is required.</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			<p>a New Form. The Judicial Council proposes to modify Forms GC-010 and GC-011. We support the proposed changes, subject to our comments above.</p> <p>In addition, we request that the Judicial Council modify Form GC-255, which is the form to terminate a guardianship, by adding language to permit termination of a conservatorship. Alternatively, the Judicial Council could create a new form to do so.</p> <p>There is no form for adults who seek to terminate their own conservatorship. Adults with intellectual and developmental disabilities must use Form GC-255 when they petition to terminate their conservatorship, although the form is clearly not written for an adult to use. We ask the Judicial Council to address this need by modifying the existing form, or by creating a new form for termination of conservatorship.</p>	<p>No further response is required.</p> <p>The committee recognizes the lack of a statewide form to petition for termination of a conservatorship. The development of that form is, however, beyond the scope of this proposal.</p>
3.	Orange County Bar Association by Nikki P. Miliband, President Santa Ana	A	No specific comment.	The committee appreciates the bar association’s comment. No further response is required.
4.	Spectrum Institute Palm Springs by Thomas F. Coleman Disability and Guardianship Project by Nora J. Baladerian, PhD Disability and Abuse Project	AM	<p>We offer the following comments to the proposed change in Rule 7.1101.</p> <p>The topics required to be included in mandatory training are generally good. However, we suggest that two additional matters be added:</p> <p>(a) alternatives to guardianship, including</p>	<p>The committee appreciates Spectrum Institute’s comments.</p> <p>The committee recognizes that an informed</p>

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SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>supported decision-making, and supports and services available to make such alternatives feasible; and</p> <p>(b) disability and sexuality, especially as those issues pertain to the topics of rights, abuse, and capacity.</p> <p>There is a growing interest, indeed a movement, in California and throughout the nation to require serious exploration of alternatives to guardianship and conservatorship in the pre-planning and judicial review process. Well educated court-appointed attorneys are an integral part of that process. They should receive training on that subject matter.</p> <p>The issue of sexuality of seniors and people with developmental disabilities is delicate and is often avoided altogether or handled in the most superficial manner in conservatorship proceedings. Therefore, it is important to have this topic specifically mentioned in training requirements. Assuming that the matter will be covered in other general categories runs contrary to human nature. The natural reaction of most people is to avoid the topic of disability and sexuality.</p>	<p>determination of whether a conservatorship is the least restrictive alternative necessary to protect the proposed conservatee requires awareness and consideration of alternatives. To present and advocate for a suitable alternative, the attorney appointed to represent the proposed conservatee must learn about that alternative and its availability in the local community.</p> <p>The committee understands that these issues arise more frequently in the context of limited conservatorships. In those cases, Probate Code section 2351.5(b)(6) reserves a limited conservatee’s right to control social and sexual contacts and relationships in the absence of an express order to the contrary. In the context of general conservatorships, section 2351(a) protects a conservatee’s right to receive visitors, phone calls, and personal mail subject to restriction or enforcement by court order. The committee anticipates that training on the rights of conservatees under rule 7.1103(g)(2) will address these issues.</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>Finally, we apologize that op-ed in the Daily Journal contains an error. A closer reading of the proposal has clarified that local courts may impose greater training requirements. A communication will be sent to the publication today asking the editor to publish a follow-up notice of correction.</p> <p>*Excerpts from Thomas F. Coleman, “Proposed Rule Aims to Improve Legal Advocacy in Conservatorship Proceedings,” <i>Daily Journal</i> (Apr. 13, 2018):</p> <p>This rule change would not ensure access to justice for people with disabilities in conservatorship proceedings. But the proposal is a step in the right direction.</p> <p>One good aspect is that the revision to Rule 7.1101 of the California Rules of Court would apply to attorneys appointed in general and limited conservatorships. This could have a beneficial effect on seniors as well as adults with developmental disabilities. Thus, more people could potentially benefit.</p> <p>Another positive aspect is the training requirements included in the committee’s proposal. Among the most important training requirements are subject matters that are crucial to effective advocacy and defense practices for people who have serious cognitive and</p>	<p>No further response is required.</p> <p>The committee appreciates the additional comments submitted as a copy of an editorial in the <i>Daily Journal</i>.</p> <p>No further response is required.</p> <p>No further response is required.</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			<p>communication disabilities.</p> <p>According to the committee’s proposal, subjects that must be covered in mandatory continuing education courses include the rights of persons with disabilities under state and federal law, like the Americans with Disabilities Act. Training on strategies for communicating with a client who has cognitive disabilities, ascertaining the client’s wishes, and presenting those wishes to the court is also required.</p> <p>The recognition, evaluation, and understanding of abuse of people with disabilities is a must. Training is required on the effects of physical, intellectual, and developmental disabilities on a person’s capacity to function and make decisions. How to identify and effectively collaborate with experts from other disciplines is also part of the mandatory training.</p> <p>So far so good. But some significant problems remain.</p> <p>* * *</p> <p>One major omission in subject matter is the failure to require training on less restrictive alternatives to conservatorship, including the identification of community resources that would make such alternatives feasible. There is a growing movement for supported decision-making as an alternative to guardianship and</p>	<p>The committee has included training in less restrictive alternatives to conservatorship, including identification of local options, in the subject matter listed in rule 7.1103(g).</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>conservatorship in California and throughout the nation. It is essential to have attorneys who are trained on such alternatives and that they insist that court investigators, petitioners, and judges consider them. This subject matter should be added to the committee’s proposal.</p> <p>Even if the committee were to make these suggested changes, there is much more work to do to ensure access to justice for seniors and people with disabilities in conservatorship proceedings.</p> <p>Attorneys could sit through such trainings but not implement the principles in actual practice. Without detailed requirements for training contents, without performance standards, without adequate funding for legal services, and without effective monitoring mechanisms, the training components in the committee’s proposal are only theoretically beneficial to these vulnerable clients.</p> <p>The State Bar of California needs to put flesh on the bones of this educational framework. Specific content needs to be required by the State Bar before authorizing CLE credits for any training program. There should not be a blanket authorization to local bar associations allowing them to include whatever they want in such trainings. That is what has been happening now and some of the training programs are sorely lacking.</p>	<p>The remaining comments raise important concerns, but are beyond the scope of this proposal.</p>

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			<p>There should be performance standards to which the trainings relate. Attorneys need to know in no uncertain terms exactly what is expected of them in each of the areas of training. These should not be seminars on “best practices” which can be ignored. It may take legislation to specify performance standards, or the county governments that pay the attorneys can attach performance standards to the money flow. However it occurs, performance standards are a must.</p> <p>Speaking of funding for legal services, it must be adequate enough to enable court-appointed attorneys to perform the legal services they are told they should deliver to these clients. It would be unfair for a court to authorize 10 hours of services in a case when, in fact, it would take 20 hours to do all of the things mentioned in the training program or detailed in the performance standards.</p> <p>Most of these clients cannot complain to the court or to the State Bar about ineffective assistance of counsel, conflicts of interest, or violations of ethical standards such as confidentiality and loyalty. The nature of their disabilities precludes them from understanding such things, much less filing formal complaints about deficiencies in legal services.</p> <p>In order to make the complaint process</p>	

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			<p>accessible to clients with such disabilities, there should be random audits of a sample of attorneys in each county. As the funding source for the legal services—and as the public entity responsible for ensuring ADA-compliant legal services—the county could contract with the State Bar to conduct such audits.</p> <p>Indeed, there is much more work to do in order for seniors and people with disabilities to have meaningful access to effective advocacy and defense services in conservatorship proceedings. The committee’s proposal is an honorable first step.</p> <p>The next step is for the Probate and Mental Health Advisory Committee to adopt the modifications suggested here. But most importantly, once these changes go into effect on Jan. 1, 2019, advocates for conservatorship reform need to work closely with the State Bar, the Legislature, and boards of supervisors in all of the counties to implement the additional reforms upon which true access to justice depends.</p>	<p>In response to this and other comments, the committee has revised its proposal and requested to circulate it for additional public comment in winter 2019.</p>
5.	Superior Court of Los Angeles County (no name provided)	AM	We strongly support the clarification that appointed counsel is the attorney himself or herself and not the entire firm. Los Angeles Superior Court (LASC) has a local rule making this specification but it will be more appropriate and clearer to all Bar members that appointment is individual. Other than the concerns set forth below, LASC supports the proposed changes.	The committee appreciates the court’s comment. No further response is required to this specific comment. Please see below for responses to the court’s concerns.

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			<p>The current rule, CRC 7.1101(g), allows for courts to establish higher qualification or continuing education requirements and allowed the court to impose other requirements, including an application by private counsel.</p> <p>Although the proposed rule relocates its authorization of additional local requirements for higher qualification and education requirements to subdivisions (d) and (g) of the proposed rules, the provision allowing for the court to impose other requirements, including an application by private counsel, has been deleted from the proposed subdivisions. The Los Angeles Superior Court (LASC) panel of court-appointed private counsel attorneys is approximately 200 attorneys each year. For the orderly review of the appropriate documentation submitted, based on the current rule, LASC relied specifically on the ability to have an application for the panel to be submitted along with the required documentation. By deleting that portion of the rule as to an application, it is unclear as to whether the court can impose the requirement of a separate application along with the mandatory Judicial Council forms, GC-010, the Initial Certificate of Qualification for Appointment as Counsel of Record along with mandatory GC-011, the Annual Certificate of Court Appointed Counsel. In addition, as a part of the application, LASC has in its application,</p>	<p>The committee did not intend the amendments to preclude a court from adopting local rules imposing additional eligibility requirements, consistent with the rules, on attorneys seeking appointment under section 1470 or 1471. A local rule requiring an attorney to submit an application for placement on the panel of attorneys eligible for appointment would be consistent with the purpose of this rule. The committee has added language to proposed rules 7.1102(b)(4) and 7.1103(b)(4) to make that clear.</p>

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			<p>provisions relating to the issues of attorney compensation, attorney conflicts and discretionary appointments of counsel which terms are all agreed to by the applicant.</p> <p>Thus, the proposals in both subdivisions (d) and (g) should read:</p> <p>(d)(4) A court may develop local rules that impose additional experience requirements for counsel appointed under section 1470 or 1471, including an application by private counsel.</p> <p>(g)(4) A court may develop local rules imposing additional education requirements for attorneys to qualify for appointment under section 1470 or 1471, including an application by private counsel.</p> <p>Although the court understands the proposal relates to establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code, as it relates to subdivision i, which is the initial and annual attorney certification, future rules would need to be adopted to ensure that not only has the attorney met both the requirements for education and attorney experience, but that rules also be written to address issues of failure to meet the requirements of annual certification or meeting a performance standard in the role as</p>	<p>The committee intends that failure to satisfy any of the applicable requirements of the rules would make an attorney ineligible for further appointment and would constitute good cause for the court to relieve that attorney from any existing appointments. Rule 7.1105 requires attorneys to certify their initial and ongoing compliance with the applicable requirements in these rules. Forms GC-010 and GC-011 provide mechanisms for certification. The committee has added express statements, in rules 7.1102(b)(2) and 7.1103(b)(2), to clarify that an attorney’s failure to meet any requirement in those rules, rule 7.1105, or any applicable local rule constitutes</p>

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			<p>court-appointed counsel.</p> <p>Also, LASC requests that the Judicial Council consider adding a procedure to the Rule allowing for the court to remove an otherwise qualified attorney from the appointed counsel certification list. There are instances in which an attorney meets the stated requirements for certification as appointed counsel, but for various reasons the bench officers are not comfortable appointing that attorney to cases before this county’s Probate courts. A subsection to this Rule should be added providing a process for removal of qualified counsel from the list, with specificity regarding any required notice, hearing, or other process required as part of the removal procedure.</p> <p>Finally, the label for court-appointed counsel is not consistent throughout GC-010 and GC-011 as proposed. Specifically, sometimes the term “Counsel of Record” is used, while in other places it is stated as “Court-Appointed Attorney.” Even the title of the two forms are inconsistent in this regard. LASC hopes to move away from the longstanding local use of</p>	<p>good cause to decline to appoint that attorney, to terminate the attorney’s existing appointments, and to remove the attorney from any panel or list of attorneys approved to accept appointment.</p> <p>The committee has considered but does not recommend the suggested change. Rules 7.1101–7.1105 establish minimum statewide requirements as required by section 1456. Nothing in the rules provides that satisfaction of these requirements is sufficient to entitle an attorney to placement on a panel or appointment as counsel in a specific court or proceeding. If a court determines that attorneys need to meet additional requirements to qualify for initial or continued placement on a list or panel of attorneys eligible for appointment by that court, the court may set those additional requirements by local rule. The court may also establish, by local rule, a process for removing an attorney from its panel. The committee believes that any such process should be developed at the local level, perhaps in conjunction with the county bar association, to ensure that it reflects the needs of the local culture.</p> <p>“Counsel of record” is not intended as a label for court-appointed counsel. As defined in proposed rule 7.1101(b)(2), the term refers to an attorney’s level of responsibility in a judicial proceeding, not to whether the attorney was appointed or retained. The committee has added language to the rule to make that use explicit. The term is intended to make clear that the individual attorney</p>

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			<p>the term “PVP counsel” or “Probate Volunteer Panel counsel” and instead to embrace a label such as “court-appointed counsel.” Consistency with the state Rule and the Judicial Council forms would be helpful in this regard, both for LASC and the Bar.</p> <p>There is also the issue of hyphenation. Subsection (a)(1) of the proposed Rule 7.1101 defines “court appointed counsel” while the proposed GC-011 form states “Court-Appointed Counsel” in its title. LASC proposes a uniform use of the term “court-appointed counsel” throughout the Rule and JC forms.</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose?</p> <p>The proposal does appropriately address its stated purpose of establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code. The proposal does allow the court to develop local rules to impose additional requirements. However, we suggest a slight modification to the proposed rule detailed in the suggested modifications above.</p> <p>Would the proposal provide cost savings? If</p>	<p>named in the order of appointment, and not the firm or organization, must personally satisfy the requirements (except as provided in rule 7.1102(d), rule 7.1103(d), or rule 7.1104). The committee has also, where appropriate, authorized experience as counsel of record, whether gained as appointed counsel or retained counsel, would count toward meeting the rule’s requirements.</p> <p>The committee agrees that the term “court-appointed counsel” should be hyphenated wherever it occurs in the rule and forms.</p> <p>See response above to the referenced comment.</p>

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			<p>so please quantify. It is not apparent that LASC would enjoy a cost savings caused by these proposed changes. Court staff would still be required to review, process, and track certified appointed counsel.</p> <p>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 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.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A three-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</p>	<p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p>

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			<p>modified by other agencies.</p> <p>How well would this proposal work in courts of different sizes? The changes will work well in a large court such as LASC.</p>	No further response is required.
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	<p>We welcome the several substantive changes made by this proposal.</p> <p>We note, however, that the committee’s rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that this rationale be removed or modified to prevent this result.</p> <p>Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation as has been done for family law due to the lack of a statutory mandate. We have no concerns with this.</p> <p>However, the committee goes on to opine that the court’s authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate as it does in family law, but instead flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several</p>	<p>The committee appreciates the court’s comment.</p> <p>The committee recognizes that appointment of counsel creates an attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings.</p> <p>The committee has not, however, found any support in statute, rule of court, or judicial decision for the court’s position that a proposed conservatee necessarily lacks the ability to select an attorney or to initiate an attorney-client relationship or that lack of either of those abilities is a condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee’s ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be the ultimate issue of fact for the court’s or jury’s determination in a proceeding for appointment of a conservator. The court’s decision to appoint</p>

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			<p>reasons.</p> <p>First, we believe it is incorrect. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court’s authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county’s payment of fees may create some practical authority to direct some financial aspects of the attorney-client relationship, it does not endow the county with the authority to interfere with the court’s control over court-appointed counsel. Although a county may attempt to address issues contractually, such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern.</p> <p>Does the proposal appropriately address the stated purpose? Yes.</p>	<p>counsel to represent a proposed conservatee does not, and should not be seen to, imply a determination about the client’s ability or capacity.</p> <p>Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of that relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the rules of court adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer’s obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of California (May 9, 2018, S240991) [p. 6].)</p> <p>No further response is required.</p>

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			<p>Would the proposal provide cost savings? No.</p> <p>What would the implementation requirements be for courts? Minimal.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes? Equally well.</p>	<p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p>
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify. Possibly. As mentioned in the proposal, with the new initial education requirements, court appointed attorneys would be better prepared and more knowledgeable in the field, thus, maximizing their hours worked and reducing the need to request continuances, which could also result in a reduction of fees paid by the County.</p> <p>What would the implementation requirements be for courts? For example,</p>	<p>The committee appreciates the comment. No further response is required.</p> <p>No further response is required.</p>

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			<p>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.</p> <p>We would need to inform clerical staff of the changes to ensure that court appointed attorneys are submitting the most current version of the forms. Possibility of new local rules if the judges request that attorneys have additional experience requirements. This may also impact the number of qualifying attorneys.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>The preference would be to allow at least six-months to give the attorneys enough lead time to obtain additional training, if needed.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>This proposal should work fine in courts of all sizes.</p>	<p>No further response is required.</p> <p>The committee notes that the rule’s requirements, though recommended to take effect September 1, 2019, would allow attorneys until January 1, 2021, to comply with the new requirements. The committee does not, therefore, recommend any further changes to defer their effective date.</p> <p>No further response required.</p>
8.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS) (no name provided)	A	<p>The JRS believes that these changes are necessary to:</p> <ul style="list-style-type: none"> • Increase the annual MCLE requirements from 3 to 6 hours, and to more clearly specify the subject matter. • Add initial education requirements of 8 hours 	<p>The committee appreciates the JRS’s comment.</p> <p>In response to other comments, the committee has revised its proposal to require three hours of annual education and added three hours of initial education. To balance this reduction in required</p>

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			<p>of related MCLE.</p> <ul style="list-style-type: none"> • Clarify that conservatorship requirements apply to both probate limited and “general” conservatorships. • Eliminate the disparate treatment of public defenders, and instead to impose on them the same requirements as any other appointed counsel. • Permit an attorney who otherwise does not meet the experience requirements to qualify based on the experience of a supervising attorney who does qualify. • Strengthen the express authorization for local courts to impose broader education and experience requirements, as we have done. • Update the Judicial Council forms to conform to these changes. 	<p>hours with the need for more attorney training, the committee has proposed dividing the experience and education requirements into two separate rules: rule 7.1102, for attorneys who wish to accept appointment under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to accept appointments under section 1470 or 1471 to represent conservatees and proposed conservatees. This division will give attorneys the opportunity to focus on one type of representation without increasing the education burden, but will require additional education hours for an attorney who wishes to accept appointment to represent both categories of client.</p> <p>Modifications in response to other comments have not affected the other benefits identified and endorsed by the JRS. Please see below for the committee’s responses to the JRS’s specific concerns.</p>

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			<p>Other Considerations: The proposal seeks to mandate court operations/procedures that, instead, should be permissive/discretionary. The proposed rule should instead be in the form of guidelines or suggested practices.</p> <p>We note that the committee's rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that we this rationale be removed or modified to prevent this result.</p> <p>Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation like has been done for family law due to the lack of a statutory mandate. We have no concerns with this.</p> <p>However, the committee goes on to opine that the court's authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate like it does in family law but instead</p>	<p>As mandated by Probate Code section 1456, the rules establish, as rule 7.1101 has since its adoption in 2007, minimum qualifications and education and certification requirements for counsel appointed by the court under Probate Code sections 1470 and 1471. The rule leaves courts free to impose more stringent requirements. The Judicial Council would not fulfill the specific mandate in section 1456 if it did not set mandatory minimum standards in the rules.</p> <p>As noted above in the response to the similar comment submitted by the Superior Court of Riverside County, the committee recognizes that appointment of counsel creates an attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings.</p> <p>The committee has not, however, found any support in statute, rule of court, or judicial decision for the court's position that a proposed conservatee necessarily lacks the ability to select an attorney or to initiate an attorney-client relationship or that lack of either of those abilities is a condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee's</p>

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			<p>flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several reasons. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court's authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county's payment of fees may create some practical authority to direct some financial aspects of the attorney-client relationship, it does not endow the county with the authority to interfere with the court's control over court-appointed counsel. Although a county may attempt to address issues contractually such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern.</p>	<p>ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be the ultimate issue of fact for the court's or jury's determination in a proceeding for appointment of a conservator. The court's decision to appoint counsel to represent a proposed conservatee does not, and should not be seen to, imply a determination about the client's ability or capacity.</p> <p>Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of that relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the rules of court adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer's obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of</p>

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				California (May 9, 2018, S240991) [p. 6.]
9.	Trusts and Estates Section of the California Lawyers Association Executive Committee (TEXCOM) by Chris Carico, Attorney at Law Los Angeles	N	<p>TEXCOM does not agree with the amendments, as proposed, but believes this issue is worthy of further consideration. TEXCOM would welcome the opportunity to work with the Probate and Mental Health Advisory Committee and other interested stakeholders on the development of an alternative proposal, in light of our concerns. As discussed below, we are concerned primarily with the following:</p> <ol style="list-style-type: none"> 1. We are concerned that the proposed amendments will not promote more effective advocacy because, in the long run, they will tend to discourage advocates from joining the appointments panels. 2. Access to the proposed specialized area of law is unduly restricted. The experience requirements appear to create a situation in which the only attorneys qualified to be on appointment panels will be attorneys who are already on appointment panels. 	<p>The committee appreciates TEXCOM’s concerns with the proposed amendments to rule 7.1101. Please see the committee’s responses to the more detailed specific comments, below.</p> <p>The committee recognizes TEXCOM’s concern and has revised the proposal to reduce the quantity of the requirements while tailoring their content more closely to the experience and education needed by an attorney to fulfill one’s legal and ethical duties to a client subject to appointment of a guardian or conservator.</p> <p>The committee does not intend to restrict entry into guardianship or conservatorship practice beyond the extent necessary to ensure that counsel appointed under section 1470 or 1471 are qualified to represent their clients’ needs and interests, as required by section 1456. The committee has revised the proposal to clarify that qualifying experience may be gained as retained or appointed counsel and to establish alternative experience requirements to allow less experienced attorneys to be appointed if they are supervised by an attorney who meets the experience requirements.</p>

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			<p>3. While not all TEXCOM members agree, there is a concern that the requirement of six hours of specialized education per year may be excessive. The requirement seems onerous not only in relation to the normally required MCLE, but also because, like the experience requirement, it seems to unduly block access to the appointments list. As anecdotal evidence, several TEXCOM members with decades of experience in conservatorship and guardianship matters would not satisfy the rule’s strict education and experience requirements to be on the panel.</p> <p><u>FACTUAL ASSUMPTIONS</u> For purposes of our analysis, we have assumed the following facts to be true:</p> <p>1. For advocacy to be effective, there must be advocates in the first place.</p> <p>2. An attorney who represents a proposed ward or conservatee under Probate Code sections 1470 and 1471 has an important job that deals with fundamental constitutional and personal rights. These attorneys must be trained to serve their clients properly.</p> <p>3. Appointment to represent proposed</p>	<p>In response to this and other comments, the committee has revised the proposal to require three hours of annual education and added only three required hours of initial education. To balance this reduction in required hours with the need for more attorney training, the committee has proposed dividing the experience and education requirements into two separate rules: rule 7.1102, for attorneys who wish to accept appointment under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to accept appointments under section 1470 or 1471 to represent conservatees and proposed conservatees. This division will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but will require additional education hours for attorneys who wish to accept appointment to represent both types of clients.</p> <p>No response required.</p> <p>The committee agrees with this assumption.</p> <p>The committee takes no position on the accuracy</p>

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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	Commentator	Position	Comment	Committee Response
			<p>conservatees and wards traditionally has been an entry point for attorneys (particularly young attorneys) to become involved in probate matters, particularly disputed matters. This has been an incentive for attorneys to make themselves available for appointment.</p> <p>4. A private attorney appointed under Probate Code sections 1470 and 1471 often is not paid, and frequently is paid at a “county rate” that is much lower than the rates generally charged by attorneys. Many of the more experienced attorneys approach the appointments calendar as a pro bono opportunity and do not seek payment from the County. It is their way to give back.</p> <p>5. Work as an appointed attorney can be satisfying. However, it is not uncommon that parties are surprised by the insertion of an appointed attorney into their affairs, and they resist and resent the appointed attorney.</p>	<p>of this assumption, but questions whether the assumed state of affairs is entirely desirable given the importance of the fundamental rights assumed in 2, above.</p> <p>The committee has no basis to determine the accuracy of this assumption and notes that the compensation of counsel is beyond the scope of this proposal. The committee also notes, however, that sections 1470(b) and 1472(a)(1) require the court, at the conclusion of the matter, to “fix a reasonable sum for compensation and expenses of counsel. Sections 1470(c)(3) and 1472(b) provide that, if the court finds that the client or the client’s estate is unable to pay all or part of that sum, the duty to pay the attorney falls on the county. Nothing in these statutes requires the court to consider the county rate when fixing reasonable compensation. For guidelines to assist the court in determining a person’s eligibility for county payment, see Cal. Rules of Court, Appendix E.</p> <p>The committee takes no position on the accuracy of this assumption, but notes that the statutes authorize (section 1470) or require (section 1471) appointment of counsel for a proposed conservatee only after a determination, presumably informed by the investigator’s report under section 1826, that the client is not otherwise represented by counsel and either has requested appointment of counsel or does not plan to retain</p>

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			<p>6. Attorneys are consistently instructed that the best way to have a successful practice is to choose one’s clients. Attorneys who are appointed cannot choose their clients, and they thereby increase the risks inherent in their practices.</p> <p>7. More than a few attorneys see service on the appointment panel as a thankless task, but agree to serve out of a sense of duty to the profession or to the community.</p> <p>8. Probate Code section 1456, specifies education and other requirements for</p> <ul style="list-style-type: none"> a. Court-employed staff attorneys b. Examiners c. Investigators d. Judges on probate assignments, and e. Attorneys appointed under Probate Code sections 1470 and 1471 	<p>counsel. The investigator’s report, due no later than five days before the hearing on the petition, must include the conservatee’s communications regarding representation by counsel. Even if a petitioner’s or proposed conservator’s surprise at the appointment of counsel might be excused notwithstanding receipt of the report, the possibility of surprise would not relieve the court of its statutory authority or duty to appoint counsel for the person when the statutory criteria warrant it.</p> <p>The committee has taken note of section 6068(h) of the Business and Professions Code, which provides that an attorney has a duty “[n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed.”</p> <p>See response to the previous assumption.</p> <p>The committee does not question this assumption, but notes that the education requirements for probate court employees are set forth in rule 10.478 (<i>Court Investigator</i>: 18 hours within one year of start date; <i>Court attorney</i>: 18 hours within 6 months; <i>Examiner</i>: 30 hours within one year, including 18 hours on guardianships and conservatorships. All of the foregoing: 12 hours of annual education. For attorneys and examiners,</p>

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SPR18-33

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			<p>Of the persons employed in these categories, only private attorneys pay for their own education, and only private attorneys are not paid regular salaries for their work with respect to guardianships and conservatorships. In many counties, the only attorneys commonly appointed under Sections 1470 and 1471 are private attorneys.</p> <p><u>ANALYSIS</u></p> <p><u>1. The Increase in the MCLE Requirement Is Likely to Discourage Attorneys from Making Themselves Available for Appointment</u></p> <p>A. We Believe the Proposed Requirement of Six Hours of Specialized Education Each Year is Excessive</p> <p>The rule proposes requiring attorneys to complete six hours of specified continuing education each year. Specifically, it proposes:</p> <p>Except as provided in (2) <u>each calendar year</u> an attorney must, as a condition of ongoing or further appointment, complete six hours of education approved for MCLE credit by the State Bar in one or more of the subjects specific in (g)(1). (Emphasis</p>	<p>six of the 12 hours must be in guardianships and conservatorships, including fiduciary accounting.). The education requirements for judicial officers are set forth in rule 10.468 (Initial: 6 hours in first 6 mos.; continuing: varies depending on size of court, 9 or 18 hours every three years). These requirements are much more demanding than those proposed for court-appointed counsel in rule 7.1101 as circulated for comment (8 hours of initial education and 6 hours of annual education) or in rules 7.1102 and 7.1103 as currently proposed (three hours of initial education and three hours of annual education).</p> <p>The committee shares TEXCOM’s concern that the burden of the rule’s educational requirements on attorneys not exceed their benefit to clients.</p> <p>The committee recognizes that six hours of annual education are more than are currently required under rule 7.1101. To balance the demand on attorneys with the need for well-trained attorneys, the committee has divided the experience and education requirements into separate rules: rule 7.1102, for attorneys who wish to accept appointment to represent wards or proposed wards; and rule 7.1103, for attorneys who wish to accept appointment to represent conservatees and proposed conservatees. The committee has reduced the number of hours required for each type of appointment to three hours annually and three hours within the year preceding initial</p>

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Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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			<p>added.)</p> <p>Subdivision (g)(1) then lists education topics that are specific to guardianships and conservatorships. These range from statutes and rules of court applying to guardianships and conservatorships to special considerations in representing a child or an older adult.</p> <p>As noted in the Implementation discussion of the proposed rule, California attorneys generally must complete 25 hours of continuing education every three years, which education must include ethics and substance abuse. If an attorney who wishes to make himself or herself available for appointment is required to take 6 hours of specialized coursework each year, then he or she will have consumed much of his or her mandatory MCLE obligation (18 out of 25</p>	<p>appointment. An attorney wishing to accept appointment to represent clients in both categories would be required to meet the requirements of both rules, that is, six hours of education annually. Even for these attorneys, the committee notes that six hours per year, though more than the 8 hours every three years required of appointed counsel in child welfare proceedings, is less than the 8 hours per year required of counsel appointed in juvenile justice proceedings or family law custody proceedings.</p> <p>The committee has also revised the proposal to separate the subjects applicable to attorneys appointed to represent wards or proposed wards (rule 7.1102(g)) from the subjects applicable to attorneys appointed to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity (rule 7.1103(g)). An attorney who wishes to accept appointment to represent clients in only one category may focus on training directly relevant to that representation.</p> <p>The State Bar’s requirement of 25 hours every three years sets a minimum threshold. An attorney may take as many additional hours as needed or desired to acquire and maintain competence in a chosen area of practice.</p>

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			<p>hours) with the required specialized classes, and will still be required to take the ethics and substance abuse courses.</p> <p>The attorney who takes the required courses will be specialized for guardianship and conservatorship work, but if he or she wishes to take other course work—for example, courses in taxation, recent developments, litigation and discovery—he or she will be burdened in a way that attorneys specializing in other fields are not burdened.</p> <p>Since guardianship matters infrequently involve substantial estates, and court-appointed counsel is generally compensated at the County Rate, there is a significant financial disincentive for the highly qualified attorneys with thriving practices to participate on the panels as a service to the court and the public.</p> <p>Highly qualified attorneys may choose to volunteer time on the panel as a service to the court and the public. But, the addition of substantial education requirements that the private attorney must personally pay for creates another large disincentive to their participation. In short, it makes the private attorneys pay to</p>	<p>The committee understands that counsel eligible for court appointment in other specialized areas of law are required to meet experience and education requirements equally or more demanding than the requirements proposed here.</p> <p>The committee understood from assumptions 4 and 7, above, that—notwithstanding the statutory requirement that the court, on conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel—appointed counsel serve out of a sense of duty, usually pro bono. Counsel who serve under those expectations would seem likely to regard compensation at the county rate as a windfall. Nevertheless, the committee does not read section 1470 or 1472 to require or authorize the court to consider a county rate when fixing reasonable compensation.</p> <p>The committee has reduced the number of hours of education to allow a broader set of attorneys to meet them. The hours required would be consistent with or fewer than the hours required for attorneys to qualify for appointment in child welfare, juvenile justice, and family law custody proceedings.</p>

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

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			<p>volunteer.</p> <p>Moreover, if we presume that the State Bar’s requirement of 25 hours of MCLE in three years is reasonable, then the proposed rule’s requirement of six hours of specialized education each year appears unreasonable.</p> <p>More generally, it seems likely that the increase in specialized MCLE required by the proposed rule will be a burden that will discourage attorneys from making themselves available for appointment. This applies especially to young attorneys who have traditionally assisted in filling the appointments lists.</p> <p>B. We Do Not Believe the Proposed Alternatives Solve the Problem</p> <p>The Probate and Mental Health Advisory Committee (Committee) acknowledges that, “The proposed amendments to the education requirements may lead to a short-term reduction in the number of qualified attorneys available for appointment.” TEXCOM believes this is definitely the case, but seriously questions whether the reduction will be short-term only.</p>	<p>The committee notes that the State Bar establishes “<u>Minimum</u> Continuing Legal Education” requirements. Attorneys who practice in areas of law that require specialized knowledge are encouraged to complete additional hours of education. That encouragement should be especially emphatic in areas of practice that implicate fundamental rights to the extent that the Legislature has required the establishment of minimum hours of specialized education.</p> <p>The committee has reduced the number of hours of education to allow a broader set of attorneys to meet them. The hours required would be consistent with or fewer than the hours required for attorneys to qualify for appointment in child welfare, juvenile justice, and family law custody proceedings.</p>

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			<p>The Committee suggests that this predicated short-term reduction in the number of qualified attorneys available for appointment will be counteracted by “the alternative experience requirements in rule 7.1101(e) and the transitional provisions in rule 7.1101(k).”</p> <p>However, the “alternative experience requirements in rule 7.1101(e)” will not minimize the effect of the new education requirements, because rule 7.1101(e) itself requires the appointed attorney to have “completed the education required in (d).” Moreover, the alternative experience requirements will open the door of appointment eligibility to a very small number of private attorneys who have met the new education requirements, and who can be “directly supervised by an attorney working in the same firm, organization or office who satisfies the applicable experience requirements in (d).”</p> <p>Similarly, the transitional provisions in rule 7.1101(k) will not have a real impact on the number of attorneys who make themselves eligible for appointment. At best, those rules state that an attorney qualified to be appointed before 2020 can remain on his or her cases even if he or she opts out of the new system. It seems likely that the new MCLE rules will have a sustained long-term effect of discouraging attorneys from making themselves available for appointment.</p>	<p>The committee has revised the proposal to remove the requirement that the attorney qualified under rule 7.1102(d) or rule 7.1103(d) have met the initial education requirements as well as to remove the requirement that the supervising attorney work in the same firm or organization as the appointed attorney.</p> <p>The committee has revised the proposal to remove the transitional provisions.</p>

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			<p><u>2. The Experience Requirements Present a Potential Problem That May Slowly Reduce the Number of Attorneys Eligible for Appointment</u></p> <p>Under proposed rule 7.1101(d)(2)(A), an attorney can be qualified to be on the conservatorship appointment panel if, “within the three years immediately before the date of first availability,” he or she “(A) represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships.” The problem is that the only realistic way to represent three proposed conservatees in three years is to be appointed by the court to represent them. But, if an attorney can only be appointed if the attorney has already been appointed, how does the attorney get appointed in the first place?</p> <p>Alternatively, under proposed rule 7.1101(d)(2)(B) and (C), an attorney can be qualified to be on the conservatorship appointment panel if he or she</p> <p>Completed at least two of the following tasks in the last three years:</p> <ul style="list-style-type: none"> (i) Represented petitioners in three conservatorship cases from start to finish, or (ii) Represented a party in at least three contested conservatorships, or (iii) Represented someone for whom the court could appoint a legal counsel under 	<p>The committee has modified its recommendation to allow the required experience to have been acquired within five years preceding acceptance of initial appointment.</p>

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			<p>various provisions of the Probate Code (presumably without having been appointed) AND (i) Represented fiduciaries in three complete court-filed accounting proceedings, or (ii) Prepared three wills or trusts, three durable powers of attorney for health care, and three durable powers of attorney for asset management.</p> <p>We recognize that this proposed rule is similar in ways to the existing rule, changing the relevant time period from five years under the current rule to three years under the proposal. We believe this entire rule should be re-evaluated as an experience qualification. Few young attorneys will be in on the “start” of a conservatorship case, and some conservatorship cases literally never end – depending on the lifespan of the conservatee. Not many attorneys have three conservatorship cases in three years, and even fewer have three contested conservatorship cases in three years. An attorney who wanted to get into the conservatorship field, and who wanted to make himself or herself available for appointment, would be hard pressed to obtain that experience.</p> <p>With the prevalence of revocable trusts, not many attorneys will do three complete court-filed accountings in three years.</p>	<p>The committee regrets any misunderstanding caused by the proposed language. The rule is not intended to require an attorney to have experience representing a petitioner following the conclusion of the hearing on the petition unless the petition was granted, in which case, the attorney must have continued to assist the client in obtaining letters of conservatorship.</p> <p>The committee agrees with the comment and has removed the accounting requirement from the rule.</p>

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			<p>Finally, we believe the idea that preparation of a few estate planning documents (under proposed rule 7.1101(d)(2)(C)(ii), which would change the current requirement from five of the identified documents to three) would in any way prepare an attorney to represent a proposed conservatee in a real court case is an anomaly. In today’s world of computerized forms, an attorney might meet this requirement within a week or two of passing the bar. Experienced conservatorship lawyers have serious concerns about including this as an experience requirement.</p> <p>We are also concerned about the idea that representing a fiduciary in an accounting proceeding could prepare an attorney to represent a proposed conservatee or ward. The tasks are very different.</p> <p><u>Illustrations</u></p> <p>If a medical doctor with a geriatrics specialty went to law school and took courses specializing in guardianship and conservatorship law and graduated first in her class, then hung up a shingle to practice as a solo attorney, she could not qualify to be on an appointments panel. As a solo with no in-house supervisor, she might never qualify to be on an appointments panel.</p> <p>If a 65-year old attorney with a great amount of litigation experience in the probate field, who</p>	<p>The committee agrees that general estate planning experience does not prepare an attorney to represent a conservatee and, as suggested, has eliminated this element from the applicable experience requirements.</p> <p>The committee agrees that preparing an accounting, without more, would not sufficiently prepare an attorney to represent a conservatee or ward. The committee has removed that requirements from the proposed rules.</p> <p>The committee has modified its recommendation to remove the requirement that the supervising attorney work for the same organization.</p>

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

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			<p>had represented many proposed conservatees in the past, but not in the recent past, wished to go on the appointments panel to finish his or her career with some pro bono work, he or she would not qualify for the appointments panel.</p> <p>TEXCOM questions whether this is the policy we want and believes the requirements should be more flexible, perhaps allowing the probate judges to exercise some discretion and permitting some variation based on different circumstances in the various counties.</p> <p><u>Alternative Work Experience</u> We endorse the concept of “alternative work experience” but believe it should be expanded to include an arrangement that involves supervision by a more experienced lawyer in a different firm and not just the same law firm. Otherwise, attorneys in small firms or solo practitioners will have little to no ability to obtain the necessary work experience in the field.</p> <p>As noted above, the attorney needs work experience to get on the panel, but the only way to get the experience as court-appointed counsel is to be on the panel and be appointed by the court. As an additional alternative, for courts that have the necessary resources, the combination of an in-depth multi-day training</p>	<p>In response to the concerns raised by TEXCOM and other commentators, the committee has relaxed the amount of experience and education required by the proposed rules while focusing their content more directly on conservatorships and guardianships. In addition, the rules authorize smaller courts to waive some or all of the experience and initial education requirements.</p> <p>The committee agrees with the suggestion and has modified its recommendation to remove the requirement that the supervising attorney work for the same organization.</p> <p>The committee has modified the proposal to clarify that the required experience may be acquired by representing appropriate clients, regardless of whether the representation was initiated by appointment or retention. In addition, the alternative experience requirements in proposed rules 7.1102(d) and 7.1103(d) allow an</p>

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			<p>course for newer lawyers focusing on guardianships and conservatorships and assignment of an experienced attorney to serve as mentor to the newer attorney may provide newer attorneys with the necessary opportunity to get the required experience.</p> <p>To encourage older more experienced attorneys to serve as mentors without the risk of liability for the newer attorneys' mistake, it would need to be clear that the newer attorney alone is counsel for the client, with the associated malpractice risk.</p> <p>CONCLUSION Conservatorship and guardianship cases are important, and deal with some of the most fundamental rights. Proposed conservatees and wards deserve qualified counsel, who are prepared to represent them in cases that are crucial to their long-term care and well-being. Due process rights must be recognized, guarded and preserved. Advocates must understand the issues and be able to communicate with their clients.</p> <p>It makes sense to design rules to do our best to ensure that attorneys representing proposed conservatees and wards are qualified. That is the purpose underlying Probate Code section 1456.</p>	<p>attorney without the required experience to accept appointment if the attorney has appropriate institutional support and supervision.</p> <p>The committee believes that the formal relationship between an attorney appointed under section 1470 or 1471 and an attorney acting as a supervisor is best left to an agreement between the attorneys themselves or their firms and organizations. Nothing in the proposed rules requires that a supervising attorney be named in an appointment order.</p> <p>The committee agrees that the rules required by section 1456 must ensure that appointed attorneys are qualified. The comments on this proposal reveal a wide range of opinion regarding the nature and amount of experience and education that would be sufficient for that purpose. The</p>

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SPR18-33**Guardianship and Conservatorship: Court-Appointed Counsel** (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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			<p>On the other hand, we do not believe the State should impose education requirements that are so burdensome that qualified attorneys who are otherwise willing to make themselves available for appointment opt out, because the MCLE becomes too burdensome and expensive. We also do not believe the State should impose experience requirements that are difficult for many attorneys to reach.</p> <p>The proposed rule appears to be designed to establish a group of specialists who will be able to do the best possible job as appointed attorneys for proposed conservatees and wards. However, if the rule in fact creates specialists, the specialists will not find themselves compensated like other specialists in the trust and probate field, and they will be doing work that often is not satisfying. This suggests that, as time goes by, the rules will be self-defeating, and that good and experienced attorneys will leave the field. At the same time, young and eager attorneys will find it difficult to make themselves qualified to serve. Ultimately, there is a danger that the perfect is being made the enemy of the good.</p>	<p>committee intends the proposed rules to establish minimum requirements that ensure adequate qualification without being excessively burdensome or difficult to satisfy.</p> <p>The committee's intent in developing the rules in this proposal has been to fulfill the mandate of section 1456: to specify minimum qualifications, hours and subject matter of education, and reporting requirements to ensure adequate representation by attorneys appointed under section 1470 or 1471. The specification of any minimum standards will necessarily reduce the size of the pool of attorneys qualified to accept appointment. The committee has consistently borne this effect in mind and sought to mitigate it without abdicating its statutory duty.</p>
10.	Tulare County Public Guardian's Office by Francesca Barela, Deputy Public Guardian Visalia	A	I feel it is important that our conservatees have adequate counsel. Our clients need good representation. Continuing education is important as well as knowledge of Probate Codes and laws. I agree with the proposed changes.	The committee appreciates the comment. No further response is required.

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

RUPRO ACTION REQUEST FORM

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

Meeting: December 10, 2018

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Language Access: Language Services in Non-Courtroom Programs and Services

Committee or other entity submitting the proposal:
Language Access Plan Implementation Task Force

Staff contact (name, phone and e-mail): Diana Glick, 916-643-7012, diana.glick@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: March 1, 2018

Project description from annual agenda:

The LAP, which was adopted by the Judicial Council on January 22, 2015, contains 75 recommendations for branch-wide implementation to enhance language access for LEP court users. Four rules specifically address the provision of language assistance in court-ordered services and programs, and the use of technology to achieve language access in activities that occur outside the courtroom:

- Recommendation No. 10, which calls for the use of qualified court interpreters in all "court-ordered, court operated" programs;
- Recommendation No. 11, which contains a statement indicating that LEP court users should not be required to participate in court-ordered programs and services if those programs are not available in the language of the court user or if language services are not provided to enable access to the program;
- Recommendation No. 30, which calls for the Judicial Council to "consider adopting policies" that will encourage the use of remote technologies to promote the sharing of bilingual human resources among courts to meet the needs of LEP court users in noncourtroom proceedings; and
- Recommendation No. 33, which requires courts to ascertain whether court-appointed professionals can provide "linguistically accessible services" before ordering court users to avail themselves of those programs, services and professionals. This recommendation also calls for courts to enter into contracts with providers who can provide linguistically-accessible services.

If requesting July 1 or out of cycle, explain:

N/A

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

N/A

JUDICIAL COUNCIL OF CALIFORNIA

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

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INVITATION TO COMMENT

W19-09

Title	Action Requested
Language Access: Language Services in Non-courtroom Programs and Services	Review and submit comments by February 12, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450	September 1, 2019
Proposed by	Contact
Language Access Plan Implementation Task Force	Diana Glick, 916-643-7012
Hon. Mariano-Florentino Cuéllar, Chair	diana.glick@jud.ca.gov
Hon. Manuel J. Covarrubias, Vice-Chair	

Executive Summary and Origin

The Judicial Council has charged the Language Access Plan Implementation Task Force with overseeing and ensuring implementation of the *Strategic Plan for Language Access in the California Courts* (LAP). The plan provides a comprehensive and systematic approach to expanding language access in the California courts, in fulfillment of the courts' obligations under title VI of the Civil Rights Act of 1964. The Task Force proposes a new rule of court and three optional forms to satisfy a series of LAP recommendations focusing on the provision of language services outside the courtroom.

Background

The LAP, which was adopted by the Judicial Council on January 22, 2015, contains 75 recommendations for branchwide implementation to enhance language access for limited English proficient (LEP) court users.

LAP recommendations

Four recommendations specifically address the provision of language assistance in court-ordered services and programs—and the use of technology to achieve language access in activities that occur outside the courtroom:

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

- Recommendation 10 calls for the use of qualified court interpreters in all “court-ordered/court operated” programs;
- Recommendation 11 contains a statement indicating that LEP court users should not be required to participate in court-ordered programs and services if those programs are unavailable in the language of the court user or if language services are not provided to enable access to the programs;
- Recommendation 30 calls for the Judicial Council to “consider adopting policies” that will encourage the use of remote technologies to promote the sharing of bilingual human resources among courts to meet the needs of LEP court users in non-courtroom proceedings;¹ and
- Recommendation 33 requires courts to ascertain whether court-appointed professionals can provide “linguistically accessible services” before ordering court users to avail themselves of those programs, services, and professionals This recommendation also calls for courts to make reasonable efforts to enter into contracts with providers who can provide linguistically accessible services.

Appellate court finds abuse of discretion in ordering parent to participate in programs without language access

In 2017, the Second Appellate District of the Court of Appeal reversed a lower court’s dispositional order requiring a father who had been denied custody of his children to participate in alcohol treatment and parenting classes that were not available in a language he spoke.

Factual and Procedural Background

The father in the case was a recent immigrant from Myanmar who spoke only Burmese or Karen. In May 2016, the Department of Children and Family Services (DCFS) removed his two children because his alcohol use rendered him unable to properly care for them. Father expressed a desire and willingness to participate in alcohol treatment in order to be reunified with his children. Over the course of several dependency hearings, DCFS reported back to the court that no residential alcohol treatment could be located that would provide language assistance and that Father struggled to comply with alcohol testing because of his communication barrier. At a later hearing, DCFS reported that the agency had been unable to identify any treatment options for Father that were offered in Burmese. At the disposition hearing, DCFS proposed a case plan that recommended a full alcohol treatment program, a 12-step program, and a parenting course. In June 2017, full legal and physical custody was granted to the mother and Father was allowed supervised visitation only. The lower court found that DCFS had made reasonable efforts to

¹ As an initial response to Recommendation 30, the Translation, Signage and Tools for Courts Subcommittee developed the report, *Technological Options for Providing and Sharing Court Language Access Services Outside the Courtroom*, which provides a survey of current practices in California courts and other courts across the country with respect to the use of technology to maximize existing human resources and enhance language services. This report was approved by the Task Force on January 30, 2018, for posting on the Language Access Toolkit, and is cited in the advisory committee comment in the proposed rule of court.

reunify Father with his children, but that Father’s progress had been “minimal.” (*In re J.P.* (2017) 14 Cal.App.5th 616, 619–623.)

Appellate Court Holding and Decision

The appellate court held that “the order that [Father] attend a drug treatment program, a 12-step program, and a parenting program, without any further detail as to how such programs could be attended, given his known language difficulties, constituted an abuse of discretion.” (*Id.* at pp. 629–630.) The court reversed this portion of the dispositional order and remanded the case to the dependency court for reconsideration of its order terminating jurisdiction. (*Id.* at pp. 630–631.)

In addition to finding an abuse of discretion by the dependency court, the decision emphasized the dire consequences of failing to provide language assistance in conjunction with court-ordered services in a dependency case, not only for parents who risk being denied the care, custody, and control of their children, but for the children themselves, whose health and safety are at stake:

The remedy is for DCFS and the court to provide language assistance of some sort. Our dependency laws require reasonable reunification services for parents (§ 361.5) but those services are fundamentally for the protection of the children. A dependent child is at risk if a parent with an untreated serious alcohol problem is given custody of, or visitation with, such child, without a program to address the problem. That DCFS could not easily arrange for services in a language a parent could understand is of no consolation to a child who has been abused or neglected.

(*In re J.P.*, *supra*, 14 Cal.App.5th at p. 626.)

The Proposal

The Task Force proposes the adoption of new rule 1.300 (Access to programs, services, and professionals) and approval of three new forms: *Notice of Available Language Assistance—Service Provider* (form LA-350), *Service Not Available in My Language: Request to Change Court Order* (form LA-400), and *Service Not Available in My Language: Order* (form LA-450).

The proposed rule and forms were designed to assist courts with the operational challenges of connecting LEP litigants with court-ordered programs, services, and professionals offering services directly in the language spoken by the litigant or providing language assistance to facilitate access to their content.

Proposed rule 1.300

The rule would require courts, as soon as feasible, to adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided services to the same extent as persons who are proficient in English. The rule would discourage courts, to the extent feasible, from ordering an LEP litigant to access a private service or program that is not accessible in the litigant’s language.

The rule would authorize an LEP litigant who is unable to timely comply with a court order to participate in a private service or program because of a language barrier to use proposed form

LA-400, *Service Not Available in My Language: Request to Change Court Order* to notify the court of the situation. In response, the court may modify its order or extend the deadline for compliance using form LA-450, *Service Not Available in My Language: Order*.

In addition, the rule would encourage courts to provide information to LEP court litigants about services, programs, and professionals offering language assistance. Courts may require private providers who would like to be included on a list maintained by the court to confirm annually with the court that they provide language services to LEP court litigants, using proposed form LA-350, *Notice of Available Language Assistance—Service Provider*.

The Task Force recommends placing new rule 1.300 in title 1 (Rules Applicable to All Courts). This title addresses issues such as court holidays, filing rules, and the format of papers, and contains rules for public access to court proceedings and accommodations for disability. The Task Force proposes to add a new chapter (Language Access Services), which in addition to housing proposed rule 1.300, would be an appropriate repository for any future rules of court developed to address general issues related to language access that are applicable to all courts.

Proposed forms and a Language Access forms category

The Task Force recommends the development of a new category of forms (LA) for language access-related resources. The council may consider, in a future rule proposal, consolidating Interpreter (INT) forms into this Language Access category. The numbers of the three forms in this proposal are intentionally high enough (350–450) to allow for the transfer of INT forms into this series by simply changing the first three letters of their name.

The current proposal includes three optional forms:

- Form LA-350, *Notice of Available Language Assistance—Service Provider* can be used by courts to receive information about providers that are geographically accessible to their court users and offer language assistance in conjunction with services that may be ordered by a court. The form can be filled out electronically and contains drop-down menus with common options for types of services, languages offered, and the format of language assistance. If none of the options is appropriate, the electronic form filler can simply type in information corresponding to his or her organization. The form can be filled out and submitted by service providers who wish to receive referrals from the court, and can be consulted by the court when there is a need to connect an LEP court user with a court-ordered service.
- Form LA-400, *Service Not Available in My Language: Request to Change Court Order* is intended for use by an LEP litigant who is unable to comply with a court order to participate in a private service or program because of a language barrier. The form is fillable and allows the user to describe the issue with accessing the service and to request that the court either modify its order or extend the deadline for participation.

- Form LA-450, *Service Not Available in My Language: Order* can be used by the court to respond to the *Request to Change Court Order* and contains fields for the court to enter an alternative order or extend the deadline for participation in the program or service. This form includes a Clerk’s Certificate of Mailing, which will allow the court to notify the applicant and other interested parties if it modifies the order or extends the deadline.

Alternatives Considered

One alternative to this proposal would be not to develop a rule of court to address this issue; however, the Task Force determined that the courts would benefit from guidance and support with this issue, in part because of the appellate court decision in *In re J.P.*

Another alternative considered was a rule that would have had an implementation date of January 1, 2019. However, after input from numerous sources, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the Task Force determined that courts would benefit from additional time to ensure the development and implementation of appropriate processes to fully meet the objectives of the rule.

Fiscal and Operational Impacts

Implementation may require procedural changes in those courts that regularly order LEP parties to participate in programs or obtain services. The provision of language services should be accounted for in any new memoranda of understanding between the court and agencies or service providers and added to existing memoranda on the regular cycle of renewal of these documents. If a court chooses to compile information about language assistance available in conjunction with court-ordered services, it could develop a process for distribution, receipt, and processing of the *Notice of Available Language Assistance–Service Provider* forms it collects. If the court opts to manage the distribution and receipt of this form on paper, there will be photocopying costs and paper storage considerations; if the process is managed electronically, documents can be distributed, received, and stored using existing server capacity.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Will the proposed forms assist the courts in providing language assistance with non-courtroom services and programs?

The Task Force also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 1.300, at pages 7–10
2. Forms LA-350, LA-400, and LA-450, at pp. 11–13
3. Link A: *Technological Options for Providing and Sharing Court Language Access Services Outside the Courtroom*, www.courts.ca.gov/documents/lap-toolkit-technological-options-outside-the-courtroom.pdf
4. Link B: *Strategic Plan for Language Access in the California Courts*, www.courts.ca.gov/languageaccess.htm

Rule 1.300 of the California Rules of Court is adopted, effective September 1, 2019, to read:

1 **Chapter 8. Language Access Services**

2
3 **Rule 1.300. Access to programs, services, and professionals**

4
5 **(a) Definitions**

6
7 As used in this chapter, unless the context or subject matter otherwise requires, the
8 following definitions apply:

- 9
10 (1) “Court-provided programs, services, and professionals” are services offered
11 and provided by court employees or by contractors or vendors under
12 agreement with the court.
- 13
14 (2) “Court litigant” is a person who is a party in a court case or other legal
15 proceeding.
- 16
17 (3) “Language services” are services designed to provide access to the legal
18 system to limited English proficient court litigants and may include in-person
19 interpretation, telephonic interpreter services, video remote interpreting
20 services, and those provided by assigned bilingual employees and bilingual
21 volunteers.
- 22
23 (4) “Limited English proficient” describes a person who speaks English “less
24 than very well” and who, as a result, cannot understand or participate in a
25 court proceeding.
- 26
27 (5) “Private programs, services, and professionals” are services provided by
28 outside agencies, organizations, and persons, which court litigants may be
29 required to access by court order.

30
31 **(b) Provision of language services in court-ordered and court-provided programs,**
32 **services, and professionals**

33
34 As soon as feasible, each court must adopt procedures to enable limited English
35 proficient court litigants to access court-ordered and court-provided programs,
36 services, and professionals to the same extent as persons who are proficient in
37 English.

1 **(c) Provision of language services in private programs and services, and by**
2 **private professionals**

3
4 To the extent feasible, a court should avoid ordering a limited English proficient
5 court litigant to a private program, service, or professional that is not language
6 accessible.

7
8 **(d) Delay in access to services**

9
10 If a limited English proficient court litigant is unable to access a private program,
11 service, or professional within the time period ordered by the court due to
12 limitations in language service availability, the court litigant may submit a
13 statement to the court indicating the reason for the delay and the court may, for
14 good cause, enter an alternative order or extend the time for completion. Court
15 litigants may use *Service Not Available in My Language: Request to Change Court*
16 *Order* (form LA-400) for this purpose. The court may respond to the request using
17 *Service Not Available in My Language: Order* (form LA-450).

18
19 **(e) Use of technology**

20
21 Courts should seek out opportunities to collaborate with each other and with
22 community partners in the provision of language services and should employ
23 technology to promote the sharing of bilingual staff and certified and registered
24 court interpreters among courts, as appropriate.

25
26 **Advisory Committee Comment**

27
28 **Subdivision (b).** The goal of this rule is to connect limited English proficient court litigants
29 ordered by courts to access programs or professionals with services in the languages spoken by
30 the litigants. Recognizing that not all program providers will be willing or able to meet the
31 language needs, the rule is intended to help courts become aware of those language services
32 available in the community so that limited English proficient court litigants are not placed in a
33 position where they are unable to comply with court orders because the required services are not
34 available in a language they understand.

35
36 To facilitate equal access to justice, when courts order limited English proficient litigants to
37 access court-provided programs, services, and professionals, to the greatest extent possible, courts
38 should ensure that the services are language accessible.

39
40 To the extent feasible and as permitted by law, any memorandum of understanding or other
41 written agreement for agency-referred programs, services, and professionals that courts enter into
42 or amend after the implementation date of this rule should include the goal of providing language
43 services in the languages spoken by limited English proficient court users, and of notifying the

1 court in the event that the language needs of a limited English proficient court litigant referred to
2 the program, service, or professional cannot be accommodated.

3
4 **Subdivision (c).** Courts are encouraged to offer neutral, non-endorsing information about private
5 programs, services, and professionals providing multilingual services or language assistance to
6 enable limited English proficient court litigants to access their programs. Private programs,
7 services, and professionals that would like to be included on a court’s informational list may
8 confirm in writing to the court annually that they offer language services, indicating the
9 languages covered by the program, service, or professional. Courts may require providers to use
10 *Notice of Available Language Assistance—Service Provider* (form LA-350) for this purpose.

11
12 **Subdivision (d).** When a defendant is required to participate in a batterer intervention program
13 under section 1203.097(a)(6) of the California Penal Code, the court may order “another
14 appropriate counseling program” if a batterer’s program is unavailable in the language spoken by
15 the court litigant. In addition, a judge may, for good cause, excuse the requirement to complete
16 the 52-week program within 18 months. The application of a similar standard to all orders to
17 participate in non-courtroom services, whereby the unavailability of language assistance would
18 constitute good cause to make an alternative order or to excuse delay in completion, would
19 provide the court with flexibility to address situations in which a program or service is
20 unavailable in the language spoken by a limited-English-proficient court user.

21
22 Two optional forms, *Service Not Available in My Language: Request to Change Court Order*
23 (form LA-400) and *Service Not Available in My Language: Order* (form LA-450), were
24 developed to facilitate communication between the court and a limited English proficient court
25 litigant who is unable to comply with a court order because of a lack of language assistance.

26
27 Form LA-400 allows the court litigant to notify the court of the unavailability of language
28 assistance in a court-ordered program, and to request a modified order or an extension of the time
29 for completion of the program. Form LA-450 allows the court to issue a modified order or to
30 extend the time for completion of a court-ordered program or service. A request may be denied if
31 the court receives information that a program is available in the language of the court litigant, or
32 that language assistance is available to help the court litigant access the program, and that the
33 program or service may be accessed within the time mandated by the court for completion. If a
34 request is denied on this basis, the court should provide contact information that will allow the
35 court litigant to access the program. In addition, a request may be denied if the court finds there is
36 good cause to believe that the request was brought for an improper purpose or that the court
37 litigant knowingly provided false information on form LA-400.

38
39 **Subdivision (e).** It is the policy of the California courts to encourage the efficient and
40 effective use of human and technological resources in the provision of language services
41 while ensuring meaningful access for limited English proficient court users. For non-
42 courtroom interpretation events, courts may consult the report, *Technological Options for*
43 *Providing and Sharing Court Language Access Services Outside the Courtroom* (January

- 1 2018), for opportunities to collaborate with other courts and service providers to enhance
- 2 language access for LEP court users.

DRAFT

Notice of Available Language Assistance—Service Provider

Clerk stamps date here when form is received.

**DRAFT
Not Approved by
the Judicial Council**

Use this form to:

- Tell the court that you are a service provider, program, or professional offering language assistance with services that may be ordered by a court; and
- Provide information about the services you provide, the languages and types of language assistance available, and your service area.

1 This form should be filed with the court by January 31 of each year to indicate services that will be provided during the calendar year.

The information in this form describes services available during calendar year: _____

2 Name of service provider: _____

Address: _____

Telephone: _____ Web address: _____

Contact name: _____ E-mail: _____

3 Information about the services provided (*if you provide a service, language, or type of language assistance that does not appear in the drop-down box, or you provide more than one of the selections, please type in your answer*):

Service	Languages Available	Type of Language Assistance	Service Area (county or region)

Other services or assistance provided: _____

Date: _____

Type or print your name

▶ _____
Sign your name

Clerk stamps date here when form is filed.

**DRAFT
Not Approved by
the Judicial Council**

Use this form if:

- The court has ordered you to participate in a program or service;

AND

- The program or service is not available in a language you speak, and language assistance is not available or is delayed.

This form will allow you to explain your language need to the court and request a different order.

Fill in court name and address:

Superior Court of California, County of

Case Number:

① Your full name: _____

Address: _____

Telephone: _____ E-mail: _____

Language or languages you speak: _____

② Program or service ordered: _____

Date of the order: _____

Date the court ordered you to **complete** participation in the program or service: _____

(Optional) Describe your efforts to participate in the program or service:

③ Select one of the following options:

I ask the court to modify the order because the program or service ordered is not available in a language I speak and no language assistance has been offered or provided to help me access the program or service.

I ask the court to extend the deadline for participation in the program or service ordered by the court because there is a delay in providing language assistance.

Date when language assistance will be available *(if you know)*: _____

Date: _____

Type or print your name

▶

Sign your name

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the Judicial Council

1 The court received a request to change an order from:

Full Name:
Address:
Telephone: E-mail:

2 The court:

- a. Makes the following alternative order, which replaces the order described in the request:
b. Orders the required completion date of the program or service described in the request extended to:
c. Makes the following additional order or orders:

Fill in court name and address:

Superior Court of California, County of

Case Number:

d. Denies the request because:

(1) The service is available in the language spoken by the litigant and may be accessed by the required completion date.

The service may be accessed by contacting:

(2) Language assistance for this service is available and may be accessed by the required completion date.

Language assistance may be accessed by contacting:

(3) Other good cause (specify):

Date:

JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

I am not a party to this action. I caused the Request and Order to be served by enclosing a copy in an envelope addressed as shown below and caused the envelope to be deposited with the U.S. Postal Service with first-class postage fully prepaid

on (date): at (city): , California.

I certify that the foregoing is true and correct.

Date: Clerk, by , Deputy

APPLICANT (name and address):

AGENCY, if applicable (name and address):

OPPOSING PARTY (name and address):

Empty box for Applicant information

Empty box for Agency information

Empty box for Opposing Party information