Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Notice of appeal and the record in civil commitment cases (Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; approve form APP-060)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Item 9: Civil commitment cases—rule for the normal record on appeal and form notice of appeal. To provide guidance and ensure that the record is complete, consider developing a rule setting forth the contents of the normal record on appeal and a form notice of appeal for civil commitment cases. Civil commitment cases include extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1367 et seq.). They also include commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.), Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.).

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Notice of appeal and the record in civil commitment cases

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; approve form APP-060

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

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

Executive Summary and Origin

The Appellate Advisory Committee proposes a new rule of court describing the required contents of the normal record on appeal for civil commitment cases and a new notice of appeal form for civil commitment cases. This proposal is in response to a suggestion from a member of this committee and is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

Background

The California Rules of Court provide specific direction as to what should be included in the normal record on appeal in many types of cases.[1] However, no rule clearly states what constitutes the normal record on appeal in civil commitment cases. Perhaps because of the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate, but there is no clear ground for asking the clerk of the superior court to correct the record.

[1] See, for example, rule 8.120 (unlimited civil appeals); rule 8.320 (criminal appeals); rule 8.407 (juvenile appeals and writs); rule 8.610 (death penalty appeals); rule 8.830 (limited civil appeals); and rule 8.860 (misdemeanor appeals). Additionally, rule 8.480 governs the record on appeal from orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq. (the Lanterman-Petris-Short [LPS] Act), and rule 8.388 governs the contents of the record in appeals from orders granting relief by writ of habeas corpus.

Likewise, the Judicial Council publishes several notice of appeal forms.[2] However, no notice of appeal form specifically applies to civil commitment cases, and such a form could help simplify the appeal process for litigants and court staff.

The Proposal

Proposed new rule 8.483

The proposed new rule governing the normal record on appeal in civil commitment cases is based on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases, as modified to make the rule appropriate for civil commitment appeals. Although civil commitment cases are not criminal, per se, many or most of these matters stem from criminal proceedings, and thus, the contents of the record on appeal will be similar. The new rule is intended to generate a complete and useful record for civil commitment appeals.

The proposed new rule is limited in scope and would apply to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders, such as those made under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300 et seq.), which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states in subdivision (a) the types of proceedings to which it applies. Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding a requirement that diagnostic or psychological reports submitted to the court be included in the record, replacing the term "defendant" with "person subject to the civil commitment order," and omitting in its entirety subdivision (d) regarding a "limited normal record in certain appeals."

With respect to placement of the new rule, the appellate rules are generally organized into divisions (Supreme Court and Courts of Appeal, appellate division, and small claims) and then divided into chapters by subject matter. Given the varying contexts in which the issue of civil commitment may arise, such appeals may not fall neatly into any one of the existing divisions or chapters of the appellate rules. Thus, the proposal is to amend title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it "Conservatorship and Civil Commitment Appeals." New rule 8.483 would immediately follow the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion for criminal litigants caused by the placement of the new rule, it is further proposed that an Advisory Committee Comment be added to rule 8.320 (governing the record for criminal appeals) to ensure that litigants and courts are aware of the separate rule governing civil commitment appeals that may be applicable.

[2] See, for example, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002); *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (APP-102); *Notice of Appeal—Felony (Defendant)* (form CR-120); *Notice of Appeal (Juvenile)* (JV-800); and *Notice of Appeal (Misdemeanor)* (CR-132).

Proposed *Notice of Appeal—Civil Commitment* (form APP-060)

The proposed new notice of appeal form for civil commitment proceedings (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but modified for use in civil commitment appeals. In particular, given that the person subject to the civil commitment order was either a defendant or a respondent in the underlying proceeding, the form uses the term "Defendant/Respondent" throughout and defines the term to mean the "person subject to the civil commitment" at its first use. The form is also intended to be consistent in scope with the proposed new rule of court governing the normal record on appeal in civil commitment cases. The form includes an item listing the types of civil commitment proceedings, consistent with the types of proceedings in proposed new rule 8.483(a)(1), with which the form may be used. The form would be included in the "APP" (Appellate) category.

Alternatives Considered

Proposed new rule 8.483

The committee considered making no changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judicial officers. The committee also considered basing the new civil commitment rule on the language of rule 8.480 (governing LPS conservatorship appeals) and modifying that language as appropriate for civil commitment appeals. However, because the new rule is directed to appeals of civil commitment orders stemming from criminal proceedings, not commitments under the LPS Act, the committee decided that basing the new rule on the existing rule governing criminal appeals would be preferable.

The committee further considered the appropriate scope of the new rule, and whether it should include an explicit definition of "civil commitment" proceeding, either in the rule itself or in an advisory committee comment. In subdivision (a), the committee included a paragraph addressing application of the rule to prevent confusion as to what type of proceedings the rule applies. The committee further considered whether to include civil commitments under the LPS Act within the scope of the rule, but because civil commitments under the LPS Act do not necessarily stem from criminal proceedings and may be subject to other rules of court, the committee decided *not* to extend the rule to govern appeals of LPS civil commitments.

With respect to placement of the rule, the committee considered three alternative placements and decided that expanding the scope of chapter 6 to include both conservatorship and civil commitment appeals, and placing the new rule therein, would be clearest. The committee alternatively considered whether the rule should be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 3 (Criminal Appeals), article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. Although this placement could make clear that the rule is intended to cover only appeals of civil commitment orders stemming from criminal proceedings, it could also cause confusion or raise questions as to whether the new rule constitutes a change in substantive law because civil commitments are not criminal proceedings. Consideration was also given to whether to add a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil

commitment proceedings, and to add a new rule under this new chapter. Doing so would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, but it would require the creation of a new chapter containing only a single rule, which is discouraged.

Proposed *Notice of Appeal—Civil Commitment* (form APP-060)

The committee considered not developing a new notice of appeal form for civil commitment orders, and instead expanding the scope of or adding an instruction to an existing form so that the form might also be used in civil commitment appeals. Following a review of existing forms, the committee concluded that creating a new form would be clearer than using any of the preexisting notices of appeal.

The committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment* is the clearest name. With respect to how to reference the person subject to the civil commitment order being appealed most clearly and succinctly throughout the form, the committee considered whether to use the term "person subject to the civil commitment order," "Defendant/Respondent," "Petitioner/Respondent," or some variation thereof. Because the included civil commitment proceedings are not criminal but arise out of underlying criminal proceedings, the committee proposes using the term "Defendant/Respondent," defined as "the person subject to the civil commitment order."

Additionally, consideration was given to the scope of a new form, and whether it should include other types of commitments, such as commitments under the LPS Act. Likewise, the committee considered whether the new form might be used for appeals of other types of orders relating to civil commitment proceedings, but concluded that such use would expand the scope of the new form well beyond the scope of the associated proposed new rule of court and could create confusion for litigants and courts.

With respect to how to categorize the form, the committee considered whether the form should be included within the criminal forms and given a "CR" (Criminal) form designation. Because civil commitment appeals are not technically criminal in nature, and in light of the committee's decision not to place the proposed new rule of court in the chapter of the appellate rules governing criminal appeals, the "CR" designation was not used. Likewise, the committee considered changing the name of the "GC" (Guardianships and Conservatorships) category to also include civil commitments and using the "GC" moniker for the new form. However, because there are no other appellate forms in this category, inclusion of a notice of appeal specific to civil commitments could cause confusion for self-represented litigants in guardianship and conservatorship proceedings. Finally, the committee considered using the "MC" (Miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that such a designation could also make it difficult for litigants to locate the new form.

Fiscal and Operational Impacts

No significant implementation requirements, costs, or operational impacts are anticipated. However, some cost associated with duplication and distribution of the new form is likely, and some additional training will be required for court staff responsible for preparing the record on appeal in civil commitment cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act?
- Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript?
- Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order?
- Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?
- Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal?
- Is the scope of the form appropriate, and in particular, should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act?
- Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms?

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

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 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 8.830 and 8.483, at pages 6–9
2. Form APP-060, at page 10

Rule 8.483 of the California Rules of Court would be adopted and rule 8.320 would be amended, effective January 1, 2020, to read:

Rule 8.320. Normal record; exhibits

(a)–(f) * * *

Advisory Committee Comment

Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Subdivision (d)(1)(E). This rule identifies the minutes that must be included in the record. The trial court clerk may include additional minutes beyond those identified in this rule if that would be more cost-effective.

Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

Chapter 6. Conservatorship and Civil Commitment Appeals

Rule 8.483. Appeal from order of civil commitment

(a) Application and Contents

(1) *Application*

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (continue outpatient treatment or return to confinement), and 2962 et seq. (mentally disordered offenders), as well as Welfare & Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (developmentally disabled persons), and 6600 et seq. (sexually violent predators).

(2) *Contents*

In an appeal from a civil commitment order, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea, admission, or denial;

(3) All court minutes;

(4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The commitment order and any judgment or other order appealed from;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal and any certificate of probable cause filed under rule 8.304(b);

(11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

(12) Any application for additional record and any order on the application;

(13) Any diagnostic or psychological reports submitted to the court;

(14) Any written waiver of the right to a jury trial or the right to be present; and

(15) If the appellant is the person subject to the civil commitment order:

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and

(B) Any document admitted in evidence to prove a juvenile adjudication, criminal conviction, or prison term.

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings of the commitment hearing or other dispositional hearing;

(9) Any oral waiver of the right to a jury trial or the right to be present; and

(10) If the appellant is the person subject to the civil commitment order:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

(d) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(e) Stipulation for partial transcript

If counsel for the person subject to the civil commitment order and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **03-28-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant/Respondent:	
NOTICE OF APPEAL—CIVIL COMMITMENT	CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment made by the superior court.

   NAME of Defendant/Respondent:
   DATE of the order or judgment:

2. This appeal is (*check one*)
   a. ☐ after a jury or court trial.
   b. ☐ after a contested hearing.
   c. ☐ Other (*specify*):

3. Defendant/Respondent is currently being held under:
   - ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
   - ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
   - ☐ Penal Code, § 1600 et seq. (return to confinement)
   - ☐ Penal Code, § 2962 et seq. (mentally disordered offenders)
   - ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
   - ☐ Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)
   - ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
   - ☐ Other *(specify):* _____

4. ☐ Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent ☐ was ☐ was not represented by an appointed attorney in the superior court.

5. Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
   ☐ as follows:

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)

Item number: 02

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Form of Filed Documents in the Appellate Division (Adopt Cal. Rule of Court 8.815)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Item 12: Format of motions and applications filed in the appellate division. To resolve uncertainty and provide clarity, amend rule 8.817 to provide that either superior court rules (rules 2.100-2.118) or appellate rules (rules 8.40, 8.44, and 8.204) regarding formatting apply to motions and applications filed in the appellate division. Generally, the appellate rules do not apply because they apply only in cases pending in a reviewing court, and the appellate division is not defined as a reviewing court under rule 8.10(6).

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.)

INVITATION TO COMMENT

SPR19-02

Title Appellate Procedure: Form of Filed Documents in the Appellate Division	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Adopt Cal. Rules of Court, rule 8.815	Proposed Effective Date January 1, 2020
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Sarah Abbott, 415-865-7687 sarah.abbott@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes the adoption of a new rule of court governing the form of filed documents in the appellate division. The rule is intended to provide clarity to litigants, court staff, and judges as to the proper formatting of applications, motions, and other documents to be filed in the appellate division. This proposal is in response to a suggestion from a member of this committee.

Background

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800–8.936. The appellate division rules contain specific requirements governing the format of appellate division briefs for limited civil and misdemeanor appeals[1] and infraction appeals,[2] as well as briefs to be filed in the Court of Appeal after an order of transfer.[3] However, whereas the existing appellate division rules describe specific requirements regarding service and filing,

[1] See rule 8.883, detailing formatting requirements and page number limitations for limited civil and misdemeanor briefs.

[2] See rule 8.928, detailing formatting requirements and page number limitations for infraction briefs.

[3] See rule 8.1012, requiring that, except as otherwise provided, briefs following an order of transfer comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

contents, envelope requirements, and disposition of applications and motions, they are silent as to the required format of these and other documents filed in the appellate division.[4]

The trial court rules, rules 2.1 through 2.1100, "apply to all cases in the superior courts unless otherwise specified by a rule or statute."[5] Rules 2.100 through 2.118, included within the trial court rules, govern the "form and format of papers to be filed in the trial courts"[6] and contain detailed formatting requirements for trial court papers.

Separately, appellate rules 8.40 and 8.204 govern the format of "documents filed in a reviewing court,"[7] which is defined to mean the Supreme Court or Court of Appeal and to exclude the appellate division of the superior courts.[8] Rule 8.40 (Form of filed documents) generally provides that such documents "may be either produced on a computer or typewriter and must comply with the relevant provisions of rule 8.204(b)."[9] Rule 8.204(b), in turn, contains detailed requirements regarding the formatting of briefs to be filed in civil appeals in the Court of Appeal. Although rule 8.204(b) is specific to civil briefs, it is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the Court of Appeal more generally.

Although there are similarities among the rules governing the form of filed documents in the trial courts and the Court of Appeal, as well as civil and misdemeanor briefs filed in the appellate division, there are also notable differences.[10] In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to guess what format is appropriate.

The Proposal

To remedy this confusion as to the proper formatting of applications, motions, and other documents in the appellate division, the committee is proposing to adopt rule 8.815, which would govern the form of filed documents in that division. This new appellate division rule

[4] See rule 8.806 (Applications); 8.808 (Motions).

[5] See rule 2.2.

[6] See rule 2.100(b).

[7] See rule 8.40(a).

[8] See rule 8.10(6) ("'Reviewing court' means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred"); rule 8.4 ("The rules in this division apply to: [¶] (1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts").

[9] See rule 8.40(a). Rule 8.40(b)–(c) governs cover colors and information to be included on the cover page.

[10] For example, 12-point font is used in trial courts (rule 2.104) whereas 13-point font is used in the Court of Appeal (rule 8.204(b)(4)) and for civil and misdemeanor briefs in the appellate division (rule 8.883(c)(4)); papers in the trial court must contain line numbers (rule 2.108), Court of Appeal documents must not (rule 8.204(b)(5)), and rule 8.883(c) is silent as to line numbering of civil and misdemeanor briefs in the appellate division; and the requirements for the format of the first page of documents filed in the trial courts, appellate division, and Court of Appeal differ in numerous ways (compare rules 2.111, 8.40(b)–(c), 8.204(b)(10), 8.816(a), and 8.883(c)(8)). Compare generally rules 2.102–2.118 to rules 8.204(b) and 8.883(c).

would mirror rule 8.40(a), governing the form of filed documents in the Court of Appeal, and provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which states the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division.

Creating a parallel structure between the Court of Appeal rules and appellate division rules was a significant priority when the appellate division rules were repealed and replaced in full in 2008.[11] In the Court of Appeal, no rule expressly governs the proper format for applications, motions, or other documents. Instead, rule 8.40(a), which governs the form of filed documents, incorporates by reference the "relevant provisions" of the rule governing the form of civil briefs in the Court of Appeal, rule 8.204(b), and applies them generally to other documents. Adopting a new rule containing language that mirrors rule 8.40(a) and applies the relevant provisions of the appellate division rule governing the form of limited civil and misdemeanor briefs, rule 8.883(c), to other filed documents would maintain this parallel structure. In addition, since litigants in the appellate division will already be familiar with appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, this approach should provide the most clarity for appellate division litigants.

Alternatives Considered

The committee considered not making any changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judges.

The committee also considered whether to amend existing rule 8.817 to add a subdivision (c) to address the form of filed documents. However, the committee decided that it would advisable to maintain a parallel structure between the Court of Appeal rules and appellate division rules by creating a stand-alone formatting rule for the appellate division that mirrors Court of Appeal rule 8.40, rather than adding new subject matter to an existing rule.

The committee further considered whether to incorporate by reference the rules governing formatting in the trial courts (rules 2.100 through 2.118) or the Court of Appeal (rules 8.40 and 8.204(b)) into an appellate division rule regarding formatting, rather than incorporating rule 8.883(c), but decided that applying the formatting requirements contained in an existing appellate division rule would provide more clarity.

Finally, the committee considered whether to amend rules 8.806 and 8.808, the rules governing appellate division applications and motions, to include formatting requirements therein.

[11] See Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Feb. 6, 2008), p. 8. ("In developing its proposed revisions to the appellate division rules, the advisory committee therefore took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules.") However, where appropriate to account for substantive differences between proceedings in the appellate division and in the Court of Appeal (including that appellate division matters are often "smaller' and involve unrepresented litigations) and to keep appellate division matters as simple as possible, not all existing appellate division rules mirror the corresponding rules governing the Court of Appeal. (*Ibid*.)

However, the committee concluded that the new formatting requirements should not be limited to applications and motions and that adopting a more general formatting rule governing all filed documents in the appellate division would be more useful.

Fiscal and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated.

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:

- 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), or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 8.815, at page 5

Rule 8.815. Form of filed documents

Except as these rules provide otherwise, documents filed in the appellate division may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.883(c).

Item number:03

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases
Amend Cal. Rules of Court, rule 5.590; and approve form JV 805-INFO)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694

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: 2. Advisement of appellate rights in juvenile cases. To clarify the appellate rights available to parties in juvenile law cases, consider revising rule 5.590 to (1) remove the requirement that parents be present at the hearing to receive advisement of their appellate rights and (2) include reference to additional hearing types and the applicable statute. In addition, one of the advisory committee comments is no longer accurate and requires revision. This project is on the current annual agenda as a priority 2 project. The committee determined that the due process implications for parents warrant a priority 1 rating. Subcommittee: Rules.

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

SPR19-03

Title
Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Judicial Council staff
Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
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Executive Summary and Origin

To promote greater awareness of parents' and legal guardians' appellate rights in juvenile court proceedings, the Appellate Advisory Committee proposes amending the rule regarding advisement of appellate rights to remove the limitation that the court need only provide this information to parents and guardians who are present at the hearing that resulted in the judgment or order. The committee also proposes the adoption of a new optional form notice for clerks to send with court orders following a hearing to provide the advisement. This proposal originated with a suggestion from an attorney in San Diego.

Background

Rule 5.590 of the California Rules of Court[1] governs advisement of the right to review in Welfare and Institutions Code section 300, 601, and 602[2] cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of

[1] All further rules references are to the California Rules of Court.

[2] All further unspecified statutory references are to the Welfare and Institutions Code.

sufficient age, and, if present, the parent or guardian of" the right to appeal, if there is one; the steps and timing of an appeal; and an indigent appellant's rights to appointed counsel and a free copy of the transcript.[3]

This rule was adopted in 1973 as rule 251 in response to a request by the State Bar's Board of Governors for a rule requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the *minors'* appeal rights.[4] The initial focus of the rule was on ensuring that minors would be advised of their appellate rights in delinquency cases, although the rule that was adopted was not limited to delinquency proceedings.[5] In 1978, the rule was amended to apply specifically to juvenile court proceedings in which the minor is found to be a person described by section 300, 600, or 601. The "if present" limitation on providing the advisement to a minor's parent or guardian has been part of the rule since its inception.[6] Over time, the language of the rule has changed little, but its application has expanded to include the appellate rights of parents and guardians, particularly in juvenile dependency proceedings.

The requirement in rule 5.590(a) that a parent must be present at the hearing to receive an advisement of appellate rights was recently challenged by a parent in a dependency case. In *In re A.A*. (2016) 243 Cal.App.4th 1220, the mother was not present for the continued jurisdictional hearing, did not appeal the dispositional orders, and, following termination of her parental rights, challenged the juvenile court's failure to advise her of her right to appeal the disposition. The Court of Appeal rejected her contentions, concluding that a parent does not have a constitutional due process right to be advised of the right to appeal, and that, under rule 5.590(a), mother was not entitled to an advisement because she was not present at the hearing. (*Id*. at pp. 1236–1239.)

Following this decision, counsel for the mother in *In re A.A*. submitted the suggestion that rule 5.590(a) be amended to remove the requirement that a parent be present to receive an advisement of appellate rights.

The Family and Juvenile Law Advisory Committee responded by proposing a notice on certain forms to notify parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing. Effective January 1, 2018, certain JV forms (e.g., JV-415, JV-430, and JV-435) were revised by the Judicial Council to include the following language:

> **For Your Information**
> You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions

[3] Subdivision (b) addresses advisement of the requirement to seek a writ to preserve appellate rights when the court orders a hearing under section 366.26.

[4] Judicial Council of Cal., staff rep., *Report and Recommendation Concerning Advising Juveniles of Their Appeal and Rehearing Rights* (Oct. 11, 1972), at p. 1.

[5] *Id*. at pp. 3–7.

[6] *Id*. at pp. 7–8.

made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

The Proposal

Rule

The Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, proposes amending rule 5.590(a) to remove the "if present" limitation so parents and guardians will be advised of their appellate rights whether they are present for the hearing or not. Removing the limitation will promote greater awareness on the part of parents and guardians of their right to appeal juvenile court orders. This is particularly important in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See Welf. & Inst. Code, § 395.) Other rules that provide for parental advisement of appellate rights do not limit the notice to parents who are present at the hearing.[7] In addition, the committee recognizes that there are any number of reasons why a parent or guardian may not be present at a hearing, including reasons related to the court's dependency jurisdiction, medical issues, transportation issues, and so on.

Notice

The committee also proposes a new, optional form notice for courts to send after a hearing to provide the advisement of appellate rights, *Information Regarding Appeal Rights* (form JV-805-INFO). The committee recognizes that the rule amendment would require courts to provide the appellate rights advisement to parents and guardians who are not present at hearings, and the new form is intended to assist with that requirement. The form advises litigants of the right to appeal, the steps and time for taking an appeal, and the rights of indigent appellants regarding appointed counsel and a free copy of the transcript.

Alternatives Considered

The committee considered whether no rule amendment was necessary in light of the information added to certain JV forms advising parties to consult with their attorneys regarding the right of appeal. However, the committee decided to propose the rule amendment because it concluded that removing the limitation would better promote parties' awareness of their appellate rights.

The committee also considered a suggestion to amend rule 5.590(a) to better track the statutory right to appeal as provided in section 395. Based on feedback from the Family and Juvenile Law Advisory Committee, the committee declined to pursue the suggestion because there is no

[7] See rule 5.542(f) (judge must advise, "either orally or in writing, the child, parent or guardian" of appellate rights following denial of an application for rehearing of a proceeding heard by a referee); rule 5.590(b) (advisement of requirements for writ petition to preserve appellate rights must be sent by the clerk to any party not present at the hearing within one day of the court's order); and rule 5.590(c) (advisement of appellate rights must be provided orally and in writing to all parties when the court grants a petition transferring a case to tribal court).

indication that juvenile courts read the rule so narrowly as to only provide an advisement of appellate rights following disposition hearings or that courts or parties are confused or unsure about which findings and orders are appealable.

The committee also looked into a suggestion to correct an error in an advisory committee comment to rule 5.590, but the proponent provided no details and the committee found no error.

Lastly, the committee considered not developing a form notice, but concluded that a form would assist courts in providing the advisement that would be required by the rule amendment.

Fiscal and Operational Impacts

The proposal would require courts to send an advisement of appellate rights to parents and legal guardians who did not attend a hearing. One option for implementation would be for courts to include the new form when sending findings and orders to the parties following a hearing.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?
- Should the form include any other information regarding appellate rights?
- If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? (See links below.)

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.590, at page 6

2. Form JV-805-INFO, at page 7

Links to related forms not part of proposal:

3. Link to form JV-415, Findings and Orders After Dispositional Hearing (Welf. & Inst. Code, § 361 et seq.)
4. Link to form JV-430, Findings and Orders After Six-Month Status Review Hearing (Welf. & Inst. Code, § 361.21(e))
5. Link to form JV-435, Findings and Orders After 12-Month Permanency Hearing (Welf. & Inst. Code, § 366.21(f))
6. Link to form JV-440, Findings and Orders After 18-Month Permanency Hearing (Welf. & Inst. Code, § 366.22)
7. Link to form JV-455, Findings and Orders After 24-Month Permanency Hearing (Welf. & Inst. Code, § 366.25)

Rule 5.590 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a) Advisement of right to appeal

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and~~, if present,~~ the parent or guardian of:

(1)–(4) * * *

(b)–(c) * * *

JV-805-INFO Information Regarding Appeal Rights

1 Appealability

A judgment in a proceeding under section 300, 600, or 602 of the Welfare and Institutions Code may be appealed in the same manner as any final judgment, and any later order may be appealed as an order after judgment.

A judgment or later order entered by a referee or commissioner becomes appealable whenever proceedings under section 252, 253, or 254 have completed or, if proceedings under section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

2 Steps and Time for Taking an Appeal

To appeal from a judgment or an appealable order of this court, you must file a written notice of appeal within 60 days after rendition of the judgment or the making of the order being appealed, or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. You may use *Notice of Appeal—Juvenile* (form JV-800) for this purpose.

The notice of appeal must be filed in this court, not the Court of Appeal. The notice must clearly state that you are appealing, identify the judgment or order by date or describe it, and indicate whether you are appealing the entire judgment or order, or just part of it. You or your attorney must sign the notice of appeal.

3 Requesting an Attorney

If you cannot afford to hire an attorney, you may request that the Court of Appeal appoint an attorney to represent you. After you file the notice of appeal and make the request for an attorney, the Court of Appeal will contact you to find out whether you have the right to an appointed attorney.

4 Free Copy of the Transcript

If you cannot afford to hire an attorney, you may also be eligible for a free copy of the transcript.

Important!

You must keep the Court of Appeal advised of your current mailing address.

Item number:04

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Oral Argument in Appellate Division Appeals
Amend Cal. Rules of Court, rules 8.885 and 8.886; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO

Committee or other entity submitting the proposal:
Appellate Advisory Committee

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: 4. Oral argument in misdemeanor appeals. To save resources, consider whether to amend rule 8.885(a) to clarify that oral argument will not be set in cases presenting no issues. Also, consider amending rule 8.885(d) to set forth a procedure for waiving oral argument. These are suggestions from a presiding judge of an appellate division and a member of the committee. This project is on the current annual agenda as priority 1(e); work was started this year but deferred in order to conduct more research into appellate division practices. Subcommittee: Appellate Division.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR19-04

Title
Appellate Procedure: Oral Argument in Appellate Division Appeals

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.885 and 8.886; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO

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

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

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

Executive Summary and Origin

To increase efficiency and provide guidance for litigants, the Appellate Advisory Committee proposes amending the rule regarding oral argument in limited civil and misdemeanor appeals to provide that oral argument will not be set in cases presenting no arguable issues and to set forth a procedure for waiving oral argument. The committee also proposes the adoption of two optional forms, one for limited civil cases and one for misdemeanor cases, to assist litigants in waiving oral argument if they choose to do so. This proposal originated with suggestions from a presiding judge of an appellate division and a member of the committee.

Background

Oral argument in limited civil and misdemeanor appeals is governed by California Rules of Court, rule 8.885.[1] Subdivision (a) of this rule requires that oral argument be set in every appeal, "[u]nless otherwise ordered." Thus, the rule currently requires setting oral argument in misdemeanor appeals pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende* appeals) even though the appeals raise no arguable issues.

[1] All further rules references are to the California Rules of Court.

In a *Wende* appeal, the defendant's appellate counsel finds no arguable issues after reviewing the record, and files a brief pursuant to *People v. Wende* requesting that the court conduct an independent review. Although the defendant has an opportunity to file a brief, it is rarely done. The People may file a respondent's brief, but there is no need to do so because there is nothing in the opening brief to oppose.

Some, but not all, appellate divisions set oral argument in these cases. However, when a *Wende* appeal is placed on calendar and the case is called, if any party or attorney appears, it is only to submit the matter.

Subdivision (d) of rule 8.885 provides that "[p]arties may waive oral argument." The rule establishes this option for litigants but leaves it to the appellate divisions and litigants to decide how this may be accomplished. In the absence of any procedure to waive argument in advance, many litigants appear at argument only to submit the matter. Some defense counsel in misdemeanor cases inform the district attorney's office that they will not pursue oral argument, and they do not appear. The attorney for the People appears and informs the court that the appellant wishes to waive oral argument and the People do not oppose the request. In both situations, the judges have spent time preparing for the oral argument.

The Proposal

Rule amendments

Appeals that raise no arguable issues

This proposal would add new paragraph (2) to rule 8.885(a) providing that "[o]ral argument will not be set in appeals under *People v. Wende* (1979) 25 Cal.3d 436 where no arguable issue is raised." The current content of the subdivision would be numbered as paragraph (1), and would be modified to identify paragraph (2) as providing an exception to the rule that oral argument be set in all cases.

The committee's goal in proposing the amendment to subdivision (a) is to address an inefficiency in oral argument procedure. Setting *Wende* appeals for oral argument is unnecessary because they present no issues to be argued. However, the proposed rule amendment does not affect the court's authority to order oral argument in any particular case. In addition, in the rare instance where an arguable issue is found by the defendant or the court in conducting its review of the record, new paragraph (2) would not apply and the case would be set for oral argument.

Procedure for waiving oral argument

The proposed amendments to rule 8.885(d) regarding waiver of argument are also intended to save time and money for litigants and the courts. The current rule allows parties to waive oral argument, but provides no guidance on how or when to do so. The amendments provide a procedure that allows parties to file a notice of waiver within seven days after the notice of oral argument is sent by the court. If all parties waive oral argument, the court may, but is not required to, vacate the oral argument. If the court vacates the argument, it must take the affirmative step of notifying the parties. The proposal also includes an Advisory Committee

Comment to clarify that if not all parties waive oral argument, or if the court rejects a waiver request, the matter will remain on the oral argument calendar, and any party, including one who previously filed a notice of waiver, may participate in the oral argument.

Setting forth a procedure that allows parties to waive and courts to vacate oral argument in advance will save parties the time and expense of appearing in court simply to waive oral argument and submit the matter. It will also spare judges the time and effort of preparing for an oral argument that is taken off calendar when the case is called.

Date of submission

The committee recognizes that one result of placing all cases on the oral argument calendar is that, unless the court permits supplemental briefing, all cases are submitted on the date of the argument or the date its waiver is approved. If cases are not set for argument or taken off calendar in advance, the date of submission must be determined.

Rule 8.886 governs submission in limited civil and misdemeanor cases. It provides that "[a] cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court." (Rule 8.886(a).)

For non–*Wende* cases in which oral argument is waived in advance and taken off calendar, the current rule provides the date of submission: the date the court approves the waiver.

However, for *Wende* appeals, oral argument would no longer be set and the current rule, which presupposes that oral argument is set and either heard or its waiver is approved, does not provide a time of submission. Therefore, the committee proposes amending rule 8.886(a) to provide that, for *Wende* appeals that raise no arguable issues, the cause is submitted when the time to file all briefs and papers expires. The appellant's opening brief—in *Wende* appeals, counsel's brief identifying the appeal as raising no arguable issues—must be served and filed within 30 days after the record is filed in the appellate division, and any respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. (Rule 8.882(a)(1), (2).) In the vast majority of *Wende* appeals, no respondent's brief is filed, and the date of submission would be 30 days after the filing date of the appellant's opening brief.

New forms

The committee also proposes new forms for litigants to use in waiving oral argument. The forms will simplify the waiver process for litigants by taking any guesswork out of how and when to file a notice of waiver. Following the convention for appellate division forms, there is one waiver form for limited civil cases (*Notice of Waiver of Oral Argument (Limited Civil Case)*, form APP-108) and one for misdemeanor cases (*Notice of Waiver of Oral Argument (Misdemeanor)*, form CR-138), and both forms are in plain language format. Both forms include instructions on filing and service, and refer the party to other forms that provide information on appeal procedures.

The forms include a box with text labeled "Notice" to present and highlight information on the waiver process. This information is based on the amendments proposed to rule 8.885(d). In addition, in item 2 above the signature line, both forms include language advising that, by signing the form, the party or the party's attorney is requesting to waive or give up the opportunity to appear in court and argue the case. Item 2 also advises that if the court accepts the waiver, the court will decide the matter on the briefs and the record. The forms are for optional use; a party may draft its own waiver.

Amended forms

The committee proposes amending *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) and *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to conform to the changes to rule 8.885. Both forms describe oral argument and the option to waive it. The revisions describe the new procedure for waiving oral argument and include reference to the new notice of waiver forms. The revisions also clarify that if not all parties waive and the court holds oral argument, any party may choose to participate, including any who filed a notice of waiver. In addition, the revisions clarify that the 90-day period for the appellate division to decide the appeal runs from either the date of oral argument or the date the court approved its waiver. Finally, form CR-131-INFO includes an advisement that oral argument will not be set in cases that present no arguable issues.

Alternatives Considered

The committee considered not proposing any rule amendments or forms, but concluded that the savings in time and resources to be gained from taking *Wende* cases off the oral argument calendar and providing a procedure for waiving oral argument in advance justified these changes.

The committee also considered a different waiver procedure that would have allowed a party to file a notice of waiver within 10 days after the notice of oral argument is sent, and would have required the other party or parties to object within 10 days of the notice of waiver if they wished to keep the case on calendar. The committee rejected this option because it would be too cumbersome and time-consuming, and would allow one party to unilaterally take the case off calendar in the absence of a response from the other party.

Finally, the committee considered not proposing any forms for waiving oral argument, but concluded that the forms would be helpful, particularly for self-represented litigants.

Fiscal and Operational Impacts

The committee does not expect any fiscal impacts from this proposal.

With respect to operational impacts, this proposal would require appellate division clerks to track *Wende* appeals and waived cases separately for purposes of determining the date of submission and the deadline for filing the decision. This is already required for cases that are waived in advance of the argument date or have different submission dates for other reasons. In addition, the proposal may require appellate divisions in which the panel of judges typically confers

regarding pending cases only on the date of the oral argument to schedule conferences at other times for cases with different submission dates.

Notwithstanding these potential impacts, the committee has concluded that the proposal will save time and effort for the courts, and time and expense for litigants.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed waiver forms helpful and should any other content be included?

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 8.885 and 8.886, at pages 6-7
2. Forms APP-101-INFO, APP-108, CR-131-INFO, and CR-138, at pages 8-34

Rules 8.885 and 8.886 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.885. Oral argument

(a) Calendaring and sessions

(1) Unless otherwise ordered, and except as provided in (2), all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session.

(2) Oral argument will not be set in appeals under *People v. Wende* (1979) 25 Cal.3d 436 where no arguable issue is raised.

(b) * * *

(c) Notice of argument

(1) Except for appeals covered by (a)(2), as soon as all parties' briefs are filed or the time for filing these briefs has expired, the appellate division clerk must send a notice of the time and place of oral argument to all parties. The notice must be sent at least 20 days before the date for oral argument. The presiding judge may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(2) * * *

(d) Waiver of argument

(1) Parties may waive oral argument in advance by filing a notice of waiver of oral argument within seven days after the notice of oral argument is sent.

(2) The court may vacate oral argument if all parties waive oral argument.

(3) If the court vacates oral argument, the court must notify the parties that no oral argument will be held.

(e) * * *

Rules 8.885 and 8.886 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (d). If not all parties waive oral argument, or if the court rejects a waiver request, the matter will remain on the oral argument calendar. Any party who previously filed a notice of waiver may participate in the oral argument.

Rule 8.886. Submission of the cause

(a) When the cause is submitted

(1) Except as provided in (2), a cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court. The appellate division may order the cause submitted at an earlier time if the parties so stipulate.

(2) For appeals that raise no arguable issues under *People v. Wende* (1979) 25 Cal.3d 436, the cause is submitted when the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(b) * * *

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

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

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm* in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

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

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

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

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (note that the "Appeal and Writ Related Fees" section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

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

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces /codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal*

(Limited Civil Case) (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of what was said in the trial court (this is called the "oral proceedings").
- A record of the documents filed in the trial court (other than exhibits).
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court.

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

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

The first part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a "reporter's transcript."

- If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.
- You can use an agreed statement.
- You can use a statement on appeal.

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.
If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf.* If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

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

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

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

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

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

If you cannot afford to pay the cost of preparing the transcript, the $50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed

statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the

clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

b. Record of the documents filed in the trial court

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

- A *clerk's transcript;*
- The original *trial court file;* or
- An *agreed statement.*

Read below for more information about these options.

(1) Clerk's transcript

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov /forms.* The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov /forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

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

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument"?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

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

a. Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund from the Court Reporters Board of California at w*ww.courtreportersboard.ca.gov/consumers /index.shtml#trf.* The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

b. Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

c. Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm*.

d. Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms*. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

25 What happens after the official record has been prepared?

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

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving,

and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" (give up) oral argument by serving and filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument (Limited Civil Case)* (form APP-108) to waive oral argument.

If all parties waive oral argument, and the appellate division approves the waiver and takes the oral argument off calendar, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or all parties waive oral argument and the court approves the waiver), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument (or the date its waiver was approved) to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

APP-108 Notice of Waiver of Oral Argument (Limited Civil Case)

Clerk stamps date here when form is filed.

DRAFT

03/15/19

Not approved by the Judicial Council

Instructions

- This form is only for requesting to waive (give up) oral argument in an appeal in **a limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed::

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting to waive oral argument: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

Appeals in limited civil cases are scheduled for oral argument. Parties may waive oral argument by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

If all parties in the case waive oral argument, the court may vacate the oral argument and take it off the calendar. If the court vacates oral argument, you will receive notification from the court.

If not all parties waive oral argument, or if the court does not accept the waiver request, the court will not vacate oral argument and it will remain on the court's calendar. All parties will be able to participate in the oral argument, including any parties who previously requested a waiver.

(2) I have read this form and I am/my client is requesting to waive oral argument. **I understand that by signing this form I am/my client is waiving (giving up) the opportunity to appear in court and argue the case.** I also understand that if all parties waive oral argument and the court accepts the waiver and takes the oral argument off calendar, the court will decide the appeal based on the briefs and the record that were submitted.

Date: _____

_____ ▶ _____

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

CR-131-INFO Information on Appeal Procedures for Misdemeanors

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at at *http://leginfo.legislature.ca.gov /faces/codes.xhtml*.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.
- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must put your address, telephone number, fax number, and e-mail address (if available) on the cover of every document

you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments); or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp.htm* at the "Getting Started" tab.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal *any* decision that the trial court made?

No. Generally, you may appeal only the final judgment —the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. With the exception listed below, rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal:

- Before the trial court issues a final judgment in the case, from an order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- From an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court

makes ("renders") its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at *www.courts.ca.gov/rules*). The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed ("stayed") only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court (1) whether you have agreed with the respondent ("stipulated") that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at *www.courts.ca.gov/forms*). You must file this notice either:

- within 20 days after you file your notice of appeal; or, if it is later,
- within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the

judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

(14) What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree ("stipulate") to this, you can use the *official electronic recording* itself as the record, instead of a transcript.

c. You can use a *statement on appeal.*

Read below for more information about these options.

a. Reporter's transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost*:* Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.866 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.866 you can decide to use a different form of the record or take other action instead of proceeding with a reporter's transcript.

If, however, you are indigent (you cannot afford to pay the cost of a reporter's transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision

you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.866.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.866 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. As with reporter's transcripts, some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.868.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral

proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.868.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*)
- ***Exhibits submitted during trial:*** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.*) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing,

serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at *www.courts.ca.gov/selfhelp-serving.htm.*

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case unless your case presents no arguable issues for the court to consider. If your case presents no arguable issues, the court will not hold oral argument.

20 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" (give up) oral argument by serving and filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument (Misdemeanor)* (form CR-138) to waive oral argument.

If all parties waive oral argument, and the appellate division approves the waiver and takes the oral argument off calendar, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

21 What happens after oral argument?

After the oral argument is held (or all parties waive oral argument and the court approves the waiver), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after oral argument (or the date its waiver was approved) to decide the appeal. The clerk of the court will mail you a notice of that decision.

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

CR-138 Notice of Waiver of Oral Argument (Misdemeanor)

Clerk stamps date here when form is filed.

DRAFT

03-18-2019

Not approved by the Judicial Council

Instructions

- This form is only for requesting to waive (give up) oral argument in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California v.

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

Appellate Division Case Number:

1 Your Information

a. Name of party requesting to waive oral argument: _____

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

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

Phone: _____ E-mail: _____

b. Party's lawyer *(skip this if the party does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

Except for cases that raise no arguable issues under *People v. Wende* (1979) 25 Cal.3d 436, misdemeanor appeals are scheduled for oral argument. Parties may waive oral argument by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

If all parties in the case waive oral argument, the court may vacate the oral argument and take it off the calendar. If the court vacates oral argument, you will receive notification from the court.

If not all parties waive oral argument, or if the court does not accept the waiver request, the court will not vacate oral argument and it will remain on the court's calendar. All parties will be able to participate in the oral argument, including any parties who previously requested a waiver.

(2) I have read this form and I am/my client is requesting to waive oral argument. **I understand that by signing this form I am/my client is waiving (giving up) the opportunity to appear in court and argue the case.** I also understand that if all parties waive oral argument and the court accepts the waiver and takes the oral argument off the calendar, the court will decide the appeal based on the briefs and the record that were submitted.

Date: _____

_____ ▶ _____

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

Item number: 05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases (amend Cal. Rules of Court, rules 8.204 and 8.268)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Item # 11 on Annual Agenda - In light of daunting caseloads and limited resources, consider whether to amend the rules to decrease the permitted length of appellate briefs in civil cases. This project was suggested by Kevin Green, committee member, Justice Ikola, former committee chair, and Justice Rylaarsdam. Subcommittee: Rules.

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

SPR19-05

Title
Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.204 and 8.268

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

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

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

Executive Summary and Origin

To establish limits on briefing that reflect the limited scope of petitions for rehearing, the Appellate Advisory Committee proposes reducing the maximum length of petitions and answers by amending the rule that governs the content and form of briefs in the Court of Appeal. Currently, the rule provides maximum limits of 14,000 words for briefs produced on a computer and 50 pages for briefs produced on a typewriter. These limits apply to all types of briefs, including petitions for rehearing and answers to those petitions. This proposal would provide lower limits of 7,000 words and 25 pages for petitions for rehearing and answers. This proposal arises out of suggestions from appellate practitioners, including a current committee member, that the committee consider reducing word limits for civil briefs in the Court of Appeal.

Background

Until 2002, Court of Appeal briefs were subject only to a page limit: "Excluding tables and indices, a brief shall not be longer than 50 pages, whether the brief is typewritten or proportionally spaced." (Cal. Rules of Court, rule 15(e) [2001, repealed].)

In 2002, as part of a project to rewrite and reorganize the appellate rules, a word count was added as an alternative to a page count.[1] The amended rule was based on the Federal Rules of Appellate Procedure (FRAP), as explained in the July 3, 2001 report: "Length of brief measured by word count. Revised rule 14(c)(1), which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer. If the brief is produced on a typewriter, revised rule 14(c)(2) continues the existing limit of 50 pages. (See existing rule 15(e).)"[2]

Rule 14 was renumbered in 2007 as rule 8.204, which now governs the content and form of briefs in the Court of Appeal. Rule 8.204(c) retains the limits of 14,000 words[3] and 50 pages.

Rehearing in the Court of Appeal is governed by rule 8.268. Subdivision (b)(3) states that "[t]he petition and answer must comply with the relevant provisions of rule 8.204." Thus, the rules expressly provide that the 14,000-word and 50-page limits of rule 8.204(c) apply to petitions for rehearing and answers thereto.

The Proposal

This proposal would amend rule 8.204(c) to add new paragraph (5) providing for a word limit of 7,000 words and a page limit of 25 pages for petitions for rehearing and answers to those petitions. The proposal is intended to encourage brevity and concise, focused arguments; eliminate repetition; and set length limits that reflect the limited purpose of petitions for rehearing. Such petitions are appropriate to raise particular issues such as that the court's opinion contains a material omission or misstatement of fact or a material misstatement of the law, or is based on an issue that was not raised or briefed by the parties, or that the court lacked subject-matter jurisdiction. Conversely, a petition for rehearing is not an opportunity to reargue the case, raise arguments the parties did not address, or generally argue that the court reached the wrong result. In addition, the court is familiar with the case, so no summary of the factual and procedural background in the petition is needed. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee is proposing new limits of 7,000 words and 25 pages to reduce by 50 percent the permissible length of these briefs. The committee expects that this change will assist courts by

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[1] Judicial Council of Cal., Advisory Com. Rep., *Revision of Rules on Appeal: First Installment, Rules 1-18* (July 3, 2001).

[2] *Id*. at p. 20.

[3] In 2016, FRAP 32 was amended to reduce the 14,000-word limit to 13,000, based on what the committee notes to the rule explain as a revision to the conversion ratio: "When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page." (FRAP, rule 32, Com. Notes on Rules—2016 Amend.)

reducing the time it takes for Court of Appeal justices to review these petitions. The reduced limits may also save litigants time, effort, and expense. In the rare instance when longer briefing may be necessary, rule 8.204 provides, and will continue to provide, that, "[o]n application, the presiding justice may permit a longer brief for good cause."

To ensure that litigants are aware of the new word and page limits, the committee also proposes amending rule 8.268, which governs rehearing in the Court of Appeal. Currently, rule 8.268(b)(3) provides: "The petition and answer must comply with the relevant provisions of rule 8.204." The proposed amendment would refer specifically to the new length limits for petitions for rehearing in rule 8.204(c)(5).

Alternatives Considered

The committee considered whether to propose reduced limits for other types of briefs in unlimited civil appeals. The topic is timely because the U.S. Supreme Court is currently considering reducing the length of briefs filed in that court. However, the committee recognizes that the topic is complex and implicates a number of competing concerns. The committee would want to further consider the issues before making any such proposal in the future.

The committee also considered not proposing any change to the length of briefs. The committee rejected this option because the benefits of reducing the length of petitions for rehearing—reducing time spent by justices to review them and resources expended by the parties to prepare them—seem clear, and any downsides—a possible increase in applications to file an overlong brief—seem minimal.

In addition, the committee considered whether to place the new word and page limits in rule 8.204 regarding briefs or rule 8.268 regarding rehearing. There were good reasons for both options, but the committee decided to include the new length limits in rule 8.204 because "briefs" are defined to include petitions for rehearing in rule 8.10, and litigants are accustomed to finding format requirements for briefs in rule 8.204. To ensure that litigants who are seeking or opposing rehearing are aware of the new briefing length limits, the committee proposes adding a specific reference in rule 8.268 to the new length limits in rule 8.204.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing?

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?

Attachments and Links

1. Cal. Rules of Court, rules 8.204 and 8.268, at page 5

Rules 8.204 and 8.268 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.204. Contents and form of briefs

(a)–(b) * * *

(c) Length

(1) Except as provided in (5), a brief produced on a computer must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) Except as provided in (5), a brief produced on a typewriter must not exceed 50 pages.

(3)–(4) * * *

(5) A petition for rehearing or an answer to a petition for rehearing produced on a computer must not exceed 7,000 words, including footnotes. A petition or answer produced on a typewriter must not exceed 25 pages.

~~(5)~~(6) On application, the presiding justice may permit a longer brief for good cause.

(d)–(e) * * *

Rule 8.268. Rehearing

(a) * * *

(b) Petition and answer

(1)–(2) * * *

(3) The petition and answer must comply with the relevant provisions of rule 8.204, including the length provisions in subdivision (c)(5).

(4) * * *

(c)–(d) * * *

Item number: 06

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings

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

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov, and Daniel Richardson, 415-865-7619, daniel.richardson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/19/2019
Project description from annual agenda: Appellate Advisory Committee annual agenda: Legislative Implementation. Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on appellate procedure and court administration, and, where appropriate, propose to the Judicial Council rules and forms to implement the legislation or to bring rules and forms into conformity with it.

Family and Juvenile Law Advisory Committee annual agenda:
Juvenile dependency:
j. AB 1617 (Bloom) Juvenile case files: inspection (Ch. 992, Statutes of 2018)
Allows certain parties involved in appeals of juvenile court orders, who previously had been granted access to the juvenile case file pursuant to a court order, to access the case file for the appeals. Requires the Judicial Council to adopt rules to implement this provision.

If requesting July 1 or out of cycle, explain:

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

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INVITATION TO COMMENT

SPR19-06

Title
Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, JV-820, and JV-822

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov
Daniel Richardson, 415-865-7619
Daniel.richardson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose amended rules and new and revised forms to implement recent Judicial Council–sponsored legislation amending the statute that specifies who may access and copy records in a juvenile case file in an appeal or writ proceeding challenging a juvenile court order. The statutory amendment clarified that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents or real parties in interest in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court. This proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the limited record that must be prepared and provided to these persons. The committees also propose a new information sheet and a

notice on certain forms regarding the requirement to seek authorization from the juvenile court to access records in the case file before commencing an appeal.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827.[1] This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file, including the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records in the juvenile case file.

However, some individuals who are authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation occurs, for example, when the appellant is a family member or other person who files a petition seeking de facto parent status and is appealing the denial of that petition or who files a petition under section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In those cases, before the recent legislation, the juvenile courts and Courts of Appeal followed various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding could receive. Doing so took time and resources of the juvenile court, the Court of Appeal, and the persons seeking review or the respondents in such proceedings. It also resulted in delays and, particularly when the appellant or petitioner was self-represented, procedural dismissals of these appeals without consideration of their merit.

In 2017, the Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to address this

[1] All further unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court. You can access the full text of this statute at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC*).

situation. The legislation, Assembly Bill 1617, which added new paragraph (a)(6) to section 827, took effect on January 1, 2019. The new paragraph provides that a person who is not otherwise authorized to access the case file under section 827(a)(1)(A)–(P) and files a notice of appeal or petition challenging a juvenile court order or who is a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they have been given access by the juvenile court. New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the new provision.

The Proposal

Rule amendments

To implement the new legislation, the committees are proposing amendments to the juvenile appellate rules in title 8 to include provisions regarding parties to appellate proceedings who have been granted access to records by the juvenile court and the limited record that must be prepared for such parties. The amendments include new terms and definitions for ease of reference to these parties ("designated persons") and the record ("limited record") to which they are entitled. The amendments also provide guidance to juvenile court clerks who must prepare and send both the record and the limited record for appellate court proceedings.

The committees believe that these proposed rule amendments appropriately balance the policy considerations favoring confidentiality of juvenile case files against designated persons' need for access to these records to effectuate their right to participate in appellate proceedings in these cases. Because these individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections of the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would reduce barriers to their access to justice, delays in these proceedings, and time and expenses for the parties and the courts.

General provisions

Rule 8.400, Application. The proposed amendments add "and definitions" to the title and a new subdivision (b) containing definitions of "designated person" and "limited record." New subdivision (b) also clarifies that a "juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401, Confidentiality. The proposed amendment adds a new paragraph to subdivision (b) to specify that designated persons may receive only the limited record.

Appeals

Rule 8.405, Filing the appeal. A proposed new paragraph in subdivision (a) provides that an appellant who is aware that a party to the appeal is not authorized to access the juvenile case file without an approved petition must indicate so on the notice of appeal. Amendments to subdivision (b) regarding the clerk's duties address notifying the court reporter to prepare the reporter's transcript for a limited record and identifying, in the notification of the filing of the notice of appeal, any party who is a designated person.

Rule 8.407, Record on appeal. The proposed amendment adds subdivision (f) regarding a limited record for designated persons. This subdivision will specify that the limited record for a designated person must contain only those records to which the designated person has been granted access by the juvenile court. It will also provide that, to apply for additions to the limited record, the designated person must petition the juvenile court.

Rule 8.408, Record in multiple appeals in the same case. The proposed amendment provides that in cases involving more than one appeal, a limited record must be prepared for any party who is a designated person.

Rule 8.409, Preparing and sending the record. The proposed amendments to subdivision (b) provide that the clerk's and reporter's transcripts for a limited record must be prepared and paginated separately from the transcripts for the normal record on appeal. This change reflects the committee's determination, based on feedback from juvenile court clerks, that separate transcripts, rather than redacted versions of transcripts in the normal record, were the better form of the limited record to propose.

The committees also propose adding new subdivision (f) to this rule to present rules for preparing and certifying transcripts in a limited record and sending the limited record. A proposed new advisory committee comment for this subdivision clarifies that if a party not otherwise authorized to access the juvenile case file has not been granted access to records in the juvenile case file, there is no limited record to be prepared, and to obtain access, the party must file a petition in the juvenile court.

Rule 8.410, Augmenting and correcting the record in the reviewing court. The amendment adds language to include a limited record. Augmentation or correction of a limited record by a reviewing court can include only documents or transcripts to which the designated person has been granted access by the juvenile court.

Rule 8.412, Briefs by parties and amici curiae. New paragraph (a)(4) clarifies that a designated person's brief must include citations to the limited record. This requirement mirrors a provision in rule 8.204 that applies to parties using the normal record. New paragraph (a)(5) provides that, in an appeal involving a designated person, if another party's brief references material in the normal record to which the designated person has not previously been granted access, the designated person may seek such access by filing a petition in the juvenile court.

Rule 8.416, Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule. The proposed amendments include provisions for designated persons and limited records.

Writs

Rule 8.450, Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. The proposed amendments add provisions for identifying a party who is a designated person and attaching to the notice of intent a copy of the juvenile

court's order granting access to records, preparing the limited record for a designated person, and sending the limited record.

Rule 8.452, Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. New paragraph (b)(2) requires that if the petitioner is a designated person, the summary of facts in the memorandum is limited to matters in the limited record and must be supported by citations to the limited record.

Rule 8.454, Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights. These amendments mirror those proposed for rule 8.450.

Rule 8.456, Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights. These amendments mirror those proposed for rule 8.452.

New and revised forms

The committees also propose a new form and revisions to existing forms. The form revisions are intended to assist the juvenile court and potential designated persons in addressing access to the juvenile case file before an appeal or writ. The new form is an information sheet for potential designated persons regarding the right to appeal and the requirement to seek access to records in the juvenile case file for purposes of an appeal.

Proposed information sheet

Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records (form JV-291-INFO) would provide information on the right to appeal, for nonparties such as relatives and de facto parents, and the requirement to request access to the juvenile case file through a petition under section 827(a)(1)(Q). The form emphasizes that nonparties to a dependency or delinquency case have a right to appeal only in limited circumstances.

Notice to potential designated persons through JV forms

The committees anticipate that potential designated persons in appellate proceedings often may be unaware of the requirement to petition for access, and thus would not file such a petition for access to records in the juvenile case file until after the appellate proceeding has begun. This situation could cause delays and difficulties for litigants and the courts—problems the legislation was intended to solve. The committees propose adding a short notice explaining the right to appeal for nonparties to the juvenile court proceeding, and including a reference to the new information sheet (form JV-291-INFO) to forms typically used by nonparties in dependency and delinquency cases. The notice would read as follows:

> "If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a*

Nonparty's Right to Seek Review and the Requirement to Request Access to Records (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*."

The committees propose adding the notice to the following forms:

- *Relative Information* (form JV-285)
- *Caregiver Information Form* (form JV-290)
- *De Facto Parent Request* (form JV-295)
- *Request for Prospective Adoptive Parent Designation* (form JV-321)
- *Objection to Removal* (form JV-325)
- *Notice of Appeal—Juvenile* (form JV-800)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26* (form JV-820)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Designating or Denying Specific Placement of a Dependent Child After Termination of Parental Rights* (form JV-(822)

Revise* Request for Disclosure of Juvenile Case File *(form JV-570)

Form JV-570 is the mandatory form used to request disclosure of (i.e., petition for access to) the juvenile case file. It requires the petitioner to describe in detail the records that are sought and why the records are needed. The committees propose revising the item on the form that requires the petitioner to indicate the reason for the requested records. Revised item 6 adds the option that access to records is being sought for purposes of an appeal or writ petition and provides space for the petitioner to list the relevant hearing dates.

Alternatives Considered

The committees never considered proposing *no* rule changes because AB 1617 specifically requires the Judicial Council to adopt rules to implement the legislation.

The committees considered making no changes to the JV forms, but rejected this option. Because of the likelihood that individuals who are not authorized to access the juvenile case file but who are involved in appellate proceedings may be unaware of the requirement to petition for access to records in the juvenile case file, the committees chose to develop a new information sheet and include a notice on certain forms.

The committees also considered two alternatives for a limited record: (1) creating a limited record that would be a separate citable document provided to all parties, and (2) redacting copies of the normal record. The committees sought input from juvenile court clerks[2] who preferred the

[2] The committees sought feedback from court clerks who will be preparing these records as to which option they would prefer. Fourteen counties responded, with 10 preferring option one and 4 preferring option two. Most of the clerks thought that redacting the record would be too burdensome and preferred to prepare a separate limited record.

first alternative because redacting would be too time-consuming. Rule 8.409(f), therefore, requires the juvenile court clerk to prepare a separate limited record.

Finally, the committees considered alternatives to identifying parties as designated persons at the outset of an appeal or writ proceeding for purposes of timely preparing and sending the limited record, including requiring the appellant or petitioner to identify any designated persons on the notice of appeal or notice of intent, respectively, and requiring the juvenile court clerk to determine whether any party is a designated person. The proposal reflects a combination of these alternatives.

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 adequately address the stated purpose?
- What is the most effective way to communicate that people should request access to records in the juvenile case file *before* the commencement of appellate court proceedings?
- What is the best way to alert the clerk that the appeal or writ proceeding involves a limited record, particularly when the limited record is required for a party who is not the appellant or the petitioner?
- Should other rules apply to preparing, sending, and using a limited record?
- Should the rules further address the situation of a designated person responding to a brief or memorandum by a party who is using the normal record and referring to matters in documents to which the designated person has not been granted access?
- Does the proposed notice on the JV forms adequately alert individuals of the requirement to request access to records in the juvenile case file by filing a petition under section 827(a)(1)(Q)? Should the notice be included on forms that may not typically relate to an appeal, such as *Relative Information* (form JV-285) and *Caregiver Information Form* (form JV-290)?
- Does the proposed information sheet, form JV-291-INFO, provide the information necessary for an individual to understand the right to appeal and the process for requesting access to records in the juvenile case file? Should other information be included? Should other scenarios be listed in item 1 to describe when someone not entitled to access the juvenile case file would have a right to appeal?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.400–8.456, at pages 9–22
2. Forms JV-285, JV-290, JV-291-INFO, JV-295, JV-321, JV-325, JV-800, JV-820, *and* JV-822, at pages 23–40

Rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456 of the California Rules of Court are amended, effective January 1, 2020, to read:

Rule 8.400. Application and definitions

(a) Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5;

(2) Appeals or orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

(3) Writ petitions under Welfare and Institutions Code section 366.26 and 366.28.

(b) Definitions

In addition to the definitions and use of terms in rule 8.10, the following definitions and use of terms apply to the rules in this chapter:

(1) "Designated person" means a party to the appeal or writ proceeding who is not otherwise authorized to access the juvenile case file under Welfare and Institutions Code section 827 and who has been granted access to inspect and copy specified records in a juvenile case file by order of the juvenile court after filing a petition under section 827(a)(1)(Q).

(2) "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding and containing the records in the juvenile case file to which the designated person has been granted access by order of the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(3) "Juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401. Confidentiality

(a) * * *

(b) Access to filed documents

(1) Except as provided in (2)–~~(3)~~(4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties, ~~or~~ including their attorneys, and other persons the court may designate.

(2) A designated person may inspect and copy only the limited record on appeal.

~~(2)~~(3) Filed documents that protect anonymity as required by (a) may be inspected by any person or entity that is considering filing an amicus curiae brief.

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

(c) * * *

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1)–(2) * * *

(3) If the appellant is aware that a party to the appeal is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the appellant must indicate so on the notice of appeal and is encouraged to attach a copy of any order granting access to specified records under section 827(a)(1)(Q).

~~(3)~~(4) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) * * *

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and any limited reporter's transcript and deliver it or them to the clerk within 20 days after the notice of appeal is filed.

(2) * * *

(3) The notification must also identify any party to the appeal who is not authorized under Welfare and Institutions Code section 827(a)(1)(A)–(P) to access the juvenile case file. If such party is a designated person, a copy of the juvenile court order under section 827(a)(1)(Q) granting access to specified records in the juvenile case file, if available, must be included.

~~(3)~~(4) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

~~(4)~~(5) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

~~(5)~~(6) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

~~(6)~~(7) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.407. Record on appeal

(a)–(e) * * *

(f) Limited record for designated persons

(1) A limited record must contain only those records in a juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person as defined in rule 8.400(b)(1) is authorized to receive only the limited record.

(2) To apply for additions to the limited record, a designated person must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal. If an appeal involves a designated person, a limited record must also be prepared, as provided in rule 8.409(f).

Rule 8.409. Preparing and sending the record

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and with rule 8.144. An electronic clerk's transcript must also comply with rule 8.74.

(2) The clerk's and reporter's transcripts for a limited record must be produced and paginated separately from the transcripts for the normal record, and must be designated as limited clerk's transcript and limited reporter's transcript.

(c) Preparing and certifying the transcripts

Except as provided in (f), within 20 days after the notice of appeal is filed:

(1)–(2) * * *

(d) * * *

(e) Sending the record

(1) Except as provided in (f), when the transcripts are certified as correct, the court clerk must immediately send:

(A)–(B) * * *

(2)–(3) * * *

(f) Limited record

(1) Application

If the appellant or the respondent is a designated person as defined in 8.400(b)(1), the clerk and the reporter must prepare, and the clerk must send, a separate limited record, as defined in 8.400(b)(2), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(2) Preparing and certifying the transcripts in a limited record

Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare, in compliance with rules 8.74 and 8.144, and certify as correct an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript for a limited record and the same number of copies as (A) requires of the clerk's transcript.

(3) Sending the limited record

(A) When the transcripts for a limited record are certified as correct, the court clerk must immediately send:

(i) The original transcripts for a limited record to the reviewing court, noting the sending date on each original; and

(ii) One copy of each transcript for a limited record to the appellate counsel for the following, if they have appellate counsel:

a. The appellant;

b. The respondent;

c. The child's Indian tribe, if the tribe has intervened; and

d. The child.

(B) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts for a limited record are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the tribe.

(C) The clerk must not send a copy of the transcripts for a limited record to the Attorney General or the district attorney unless that office represents a party.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (e). * * *

Subdivision (f). If a party is not otherwise authorized to access records in the juvenile case file under Welfare and Institutions Code section 827, and has not been granted access to any records in the juvenile case file by the juvenile court under section 827(a)(1)(Q) at the time the record on appeal is being prepared, there is no limited record to be prepared. To obtain access to records, and thus meet the definition of a designated person, the party must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record or the limited record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and

certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(e), except as provided in rule 8.409(f).

(b) Augmentation or correction by the reviewing court

(1) Except as provided in (3), on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409(e) and (f).

(3) The reviewing court may order a limited record augmented or corrected only to include records to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) * * *

(2) Except as provided in (3) and (4), rules 8.74 and 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) * * *

(4) Any reference to a matter in the limited record must be supported by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT," where the matter appears.

(5) If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may request an extension of time from the reviewing court under subdivision (c).

(b)–(e) * * *

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts and any transcripts for a limited record must comply with rules 8.45–8.47, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144. An electronic clerk's transcript and any electronic limited clerk's transcript must also comply with rule 8.74.

(2)–(3) * * *

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) Except as provided in (C), the clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) Except as provided in (C), the reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript.

(C) If the appellant or the respondent is a designated person as defined in rule 8.400(b)(1), the clerk and the reporter must prepare and certify as correct separate transcripts for a limited record, as provided in rule 8.409(f), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court. Originals and copies of a limited clerk's transcript and a limited reporter's transcript must be prepared and delivered as provided in (A) and (B).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) Except as provided in (D), one copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i)–(iv) * * *

(C) One copy of the transcripts for a limited record, if any, to the designated person and the parties identified in (B).

A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(3) * * *

(d)–(h) * * *

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(4) * * *

(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

(~~2~~)(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original~~.~~; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

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

(a) * * *

(b) Contents of the memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) * * *

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(5) * * *

(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

~~(2)~~(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

(a) * * *

(b) Contents of memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) *** * ***

JV-285 Relative Information

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out *Confidential Information* (form JV-287) and do not write your address or telephone number below.

Social worker fills in court name and street address.

Superior Court of California, County of

Social worker fills in child's name and date of birth.

Child's Name:

Date of Birth:

Social worker fills in case number.

Case Number:

1 Your name: _____

Your Address: _____

_____

Your telephone number: _____

☐ *Check here if contact information is confidential and form JV-287 is attached.*

2 Your relation to the child: ☐ maternal ☐ paternal

☐ grandparent ☐ brother/sister ☐ aunt/uncle ☐ cousin

☐ family friend

☐ tribal extended family member

☐ other *(specify):* _____

3 Child's name: _____

4 ☐ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

5 Information about the child's medical, dental, and general physical health:

_____

_____

6 Information about the child's emotional and behavioral health:

_____

_____

7 Information about the child's education:

_____

_____

8 Other information that might be helpful to the court:

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- ☐ telephone the child.
- ☐ write letters to the child.
- ☐ take the child on outings.
- ☐ take the child to/from school.
- ☐ take the child to visits with brothers or sisters.
- ☐ take the child to therapy.
- ☐ take the child to family gatherings.
- ☐ help the social worker make a case plan for the child.
- ☐ take the child to visits with parents.
- ☐ take the child to medical appointments.
- ☐ supervise the child during visits with brothers and sisters.
- ☐ watch the child after school.
- ☐ have the child live with me.
- ☐ other *(describe):* _____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the ☐ father ☐ mother
(Describe): _____

11 Other relatives who might be able to help the child:

a. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

b. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

c. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

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**
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court, and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days, if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
   b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
   a. Name of caregiver:
   b. Type of caregiver: ☐ Foster parent ☐ Relative ☐ Legal guardian ☐ Preadoptive parent ☐ Nonrelative extended family member ☐ Other *(specify):*
   c. The child has been living in my home for *(specify):* years months.
3. **Agency or Facility Information** *(Answer only if you are an agency or facility, skip #2.):*
   a. Name of agency or facility:
   b. Address:
   c. Telephone number:
   d. Type of facility: ☐ Foster family agency ☐ Community care agency ☐ Other *(specify):*
   e. The child has been placed with our agency/facility for *(specify):* years months and in the current home for (specify): years months.
   f. Name of person completing form: Title:
   g. Hours per week the person completing this form spends with the child *(specify):* hours/week.
   h. The information on this form consists of
      (1) ☐ the observations and recommendations of the person filling out this form.
      (2) ☐ the observations and recommendations of a group or team made up of the following individuals *(specify):*
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of doctors):*
5. **Current Status of Child's Education**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of schools):*

Form Approved for Optional Use
Judicial Council of California
JV-290 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(c), (d); 16010(f)(3);
Cal. Rules of Court, rule 5.534(m)
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Child's Special Education Status**
   a. ☐ The child is a specila education student. Date of last Individualized Education Plan (IEP):
   b. ☐ The child is not a special education student.
   c. ☐ I do not know the child's special education status.

7. **Current Status of Child's Adjustment to Living Arrangement**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

8. **Current Status of Child's Social Skills and Peer Relationships**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

9. **Current Status of Child's Special Interests and Activities**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

10. **Other Helpful Information**
    a. ☐ There is no new or additional information since the last court hearing.
    b. ☐ There is new or additional information since the last court hearing, as follows:

11. **Recommendation for Disposition *(Outcome)***
    a. ☐ I have no recommendation for disposition *(outcome).*
    b. ☐ I am recommending the following disposition *(outcome).*

12. ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
    Number of pages attached:

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON WHO HAS COMPLETED THIS FORM)

JV-291-INFO Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records

Under very limited circumstances, a person who is not the child, parent, or guardian in a dependency or delinquency case has the right to seek review of decisions made by the juvenile court by filing an appeal or writ petition in the Court of Appeal. These individuals, however, are not entitled to access records in the juvenile court case file for purposes of an appeal or writ proceeding unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent, or guardian, and who may have the right to seek review, of the requirement to request access to records in the juvenile court case file by filing a *Request for Disclosure of Juvenile Case File* (form JV-570).

1 When would I have the right to seek review?

To have a right to seek review, you must be harmed by an order or judgment of the juvenile court. In the vast majority of cases, only the child, parent, or guardian will have the right to file an appeal or a writ petition challenging a juvenile court ruling. However, the law also protects those individuals who have a compelling relationship to the child in certain situations.

You might have a right to appeal or file a writ petition if you are:

- The child's relative, who requested placement of the child but the placing agency did not assess the home for placement before a hearing to terminate parental rights.
- Someone who cared for the child and requested de facto parent status, which was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180), which was denied.
- The child's sibling, who requested visitation or an exception to adoption based on preserving the sibling relationship, which was denied.
- A prospective adoptive parent challenging the juvenile court's decision to remove the child from the home.

2 If I want to file an appeal or writ petition, what additional steps must I take?

To have access to records in the juvenile case file for an appeal or writ proceeding, you must request access from the juvenile court. To make this request, you must file *Request for Disclosure of Juvenile Case File* (form JV-570). You will need to serve a copy of this form on all interested parties to the case if you know their names and addresses, including the child, parents, and social worker.

On the request form, you will need to identify which specific records you are requesting. Be sure to indicate the dates of the hearings that relate to the decision you are challenging. As the basis for the request, you may indicate the appeal or writ proceeding in the Court of Appeal. You will also need to explain why you are requesting the records. Your explanation should show how the records, including any transcripts, relate to the decision you are challenging (for example, a report or court order following a hearing on your issue).

When you file a notice of appeal or a notice of intent to file a writ petition, you will need to attach the juvenile court's order indicating the records to which the court has granted you access. Doing so will alert the clerk that you are authorized to access records in the case file and will ensure that a record will be prepared for you. The court's order is made on *Order After Judicial Review* (form JV-574).

It is recommended that you consult with an attorney when considering whether you should file an appeal or a writ petition and request access to the juvenile court record.

JV-295 De Facto Parent Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

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 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

2 I am/We are asking that I/we be appointed de facto parent(s) of

(Child's name): _____

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print attorney's name *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-321 Request for Prospective Adoptive Parent Designation

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322)*.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____
b. Name: _____
c. Street address: _____
d. City: _____ State: _____ Zip: _____
e. Telephone number: _____

2 If you are not a person in (1), fill out below.

a. Name: _____
b. I am the ☐ child ☐ child's attorney ☐ other
(specify role): _____
c. Street address: _____
d. City: _____ State: _____ Zip: _____
e. Telephone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____
b. Street address of child's attorney: _____
c. City: _____ State: _____ Zip: _____
d. Telephone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
or ☐ Telephone number is confidential.

5 The child has lived with the person from *(date)*: _____ to the present.
In order for the person in (1) to become a prospective adoptive parent, the child must be living with that person now.

6 Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in (1) should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.

7 ☐ The person in (1) is committed to adopting the child.

Child's name: _____ **Case Number:**

8 The person in **1** has *(check all that apply):*

a. ☐ Applied for an adoptive home study.
b. ☐ In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
c. ☐ Cooperated with an adoptive home study.
d. ☐ Signed an adoptive placement agreement.
e. ☐ Requested de facto parent status.
f. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive parent.
g. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court.
h. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency.
i. ☐ Attended any of the classes required of prospective adoptive parent.
j. ☐ Taken other steps toward adopting the child *(explain):* _____

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8 is true and correct, which means if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

_____ ▶ _____
Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-325 Objection to Removal

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322), and do not write the address or phone number on this form.*

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the caregiver or caregivers:

a. Name: _____

b. Name: _____

c. Address: _____

d. Phone number: _____

2 If you *(the person objecting to the removal)* are not the caregiver, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's identified Indian tribe ☐ child's identified Indian custodian ☐ child's CASA program

_____

c. Address: _____

d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Address of child's attorney: _____

c. Phone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
☐ Confidential phone number in court file

5 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Phone number of tribe: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 ☐ The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.

Child's name: _____

Case Number:

8 ☐ The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. *Request for Prospective Adoptive Parent Designation* (form JV-321), will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because *(give reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

What if I am deaf or hard of hearing?

Requests for Accommodations

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

JV-570 Request for Disclosure of Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number, if known:

Case Number:

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure *(form JV-569).*

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.

Or

b. Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.

(1) Your name: _____

Relationship to child *(if any):* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any) (name, address, telephone numbers, and State Bar number):* _____

_____

_____

(2) Name of child *(if known):* _____

(3) Child's date of birth *(if known):* _____

(4) a. ☐ A petition regarding the child in (2) has been filed under
- ☐ Welfare and Institutions Code section 300
- ☐ Welfare and Institutions Code section 601
- ☐ Welfare and Institutions Code section 602 or

b. ☐ I believe the child in (2) died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Your name: _____ **Case Number:**

5 The records I want are: *(Describe in detail. Attach more pages if you need more space. For a nonparty seeking review in an appellate court, specify the request is for transcripts and evidence considered by the juvenile court at hearings related to the appeal or writ proceeding.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 5.

6 The reasons for this request are:

a. ☐ Civil court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

b. ☐ Criminal court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

c. ☐ Juvenile court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

d. ☐ Appellate court case by a nonparty.
Case number *(if applicable):* _____
Hearing dates related to the juvenile court order being challenged or to be challenged on appeal or by writ:

e. ☐ Other *(specify):* _____
Case number: _____ Hearing date: _____

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 6–8 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. (1) ☐ Appellant is not the department, child, parent, or legal guardian.
   (2) ☐ Appellant has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-574 *Order after Judicial Review,* if available, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

4. ☐ The appeal involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

5. Items 6 through 8 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. January 1, 2020]

NOTICE OF APPEAL—JUVENILE

Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. Appellant is the
   a. ☐ child.
   b. ☐ mother.
   c. ☐ father.
   d. ☐ guardian.
   e. ☐ de facto parent.
   f. ☐ county welfare department.
   g. ☐ district attorney.
   h. ☐ child's tribe.
   i. ☐ other *(state relationship to child or interest in the case):*

7. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
   ☐ Continued in Attachment 5.

8. The order appealed from was made under Welfare and Institutions Code *(check all that apply)*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 **(California Rules of Court, Rule 8.450)**	CASE NUMBER:

NOTICE

The juvenile court has decided it will make a permanent plan for this child that may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ parent *(name):*
   b. ☐ guardian.
   c. ☐ County welfare agency.
   d. ☐ child.
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*
8. a. ☐ Petitioner is not the department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form *Order after Judicial Review* (form JV-574), if available, is attached.
9. ☐ The writ involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

TYPE OR PRINT NAME

SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. January 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26
(California Rules of Court, Rule 8.450)

Welfare and Institutions Code, § 366.26;
Cal. Rules of Court, rule 8.450
www.courts.ca.gov

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:

WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION

HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450–8.452

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

SEE WELF. & INST. CODE, §§ 248–252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS **(California Rules of Court, Rule 8.454)**	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ child's caretaker *(specify dates in your care):*
   b. ☐ child.
   c. ☐ county welfare department.
   d. ☐ legal guardian.
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
   b. On *(date):* the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.
7. a. ☐ Petitioner is not the department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on *Order after Judicial Review* (form JV-574), if available, is attached.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-822 [Rev. January 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS
(California Rules of Court, Rule 8.454)

Welfare and Institutions Code, § 366.28; Cal. Rules of Court, rule 8.454;
www.courts.ca.gov

8. ☐ The writ involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ PETITIONER ☐ CHILD'S ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

SEE CAL. RULES OF COURT, RULES 8.454–8.456

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON *NOTICE OF INTENT*

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

Item number:07

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2019
Project description from annual agenda: All appellate courts have implemented e-filing, but local rules for the format of electronic documents are often incomplete or inconsistent among the districts, resulting in burdens for litigants, attorneys, and appellate courts. The goal of this project is to develop uniform formatting rules for electronic documents filed or otherwise submitted to the appellate courts. This project originated with suggestions for rules regarding exhibits and bookmarking, and was expanded in scope to include uniform formatting for all electronic documents at the suggestion of Justice Mauro, chair of the committee. Subcommittee: JATS.

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

SPR19-07

Title
Appellate Procedure: Uniform Formatting Rules for Electronic Documents

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252

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

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Kristi Morioka, Attorney
916-643-7056 phone
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Christy Simons, Attorney
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christy.simons@jud.ca.gov

Executive Summary

To provide consistency and clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose revising California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts. The rules currently provide some formatting requirements for electronic documents, but they do not include various local rule requirements such as bookmarking. Moreover, local rules around the state differ in their requirements and scope. By establishing uniform, comprehensive rules for all appellate courts, this proposal will ease the burden on filers caused by differing format rules. This project initially focused on rules for exhibits and bookmarking, but was expanded in scope to include other formatting requirements. It originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing the formatting

requirements for electronic documents. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice.

A more limited rules amendment project began in 2017, but was deferred; the current proposal is expanded in scope. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The Proposal

Though this proposal recommends amendments to seven rules, most of the amendments are to rule 8.74. That rule currently sets forth responsibilities of electronic filers but also establishes certain minimum format requirements for electronic documents. This proposal would remove the filer responsibility provisions from rule 8.74 and add them to the court responsibility provisions in rule 8.72, and significantly expand the format provisions in rule 8.74. As expanded, rule 8.74 would establish the specific formatting requirements currently articulated in local rules, such as standards for cover pages, pagination, and bookmarks.

Rule 8.40. Form of filed documents

Rule 8.40 governs the form of filed documents. The current rule provides that filed documents may be produced on a computer or be typewritten.

The proposed amendments would create different subdivisions for electronic and paper documents, would reference the formatting rules applicable to those different types of documents, and would clarify that certain unchanged formatting requirements only apply to paper. The rule would be amended to provide that e-filing is mandatory unless an exemption applies.

Rule 8.44. Number of copies of filed documents

Rule 8.44 sets forth the rules for paper copies in the California Supreme Court and the Courts of Appeal, and in subdivision (c) addresses electronic copies. Among other things, it refers to a court that "permits" electronic filing, and it requires a local rule specifying the format of an electronic copy. Because e-filing is now mandatory, and the format of electronic documents is addressed in proposed rule 8.74, the proposal deletes those outdated references.

Rule 8.71. Electronic filing

Rule 8.71 imposes mandatory e-filing, but it allows for various exemptions, including those established by local rule. The proposal would delete the reference to exemption by local rule, and add the Supreme Court Rules Regarding Electronic Filing in subdivision (a), as follows: "Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court."

Rule 8.72. Responsibilities of the court

Rule 8.72 sets forth the e-filing responsibilities of a court. The proposal takes the provisions for the responsibilities of electronic filers from current rule 8.74 and moves them to rule 8.72 in a new subdivision (b), thereby combining the responsibilities of court and filer into a single rule, and leaving rule 8.74 to address format. The proposal also deletes current rule subdivisions 8.72(b)(1) and (b)(2) as no longer needed.

Rule 8.74. Responsibilities of electronic filer

The proposal amends rule 8.74 to establish uniform formatting rules for electronic documents filed with the appellate courts and proposes to change the title of the section accordingly. Rule 8.74(a) currently establishes the responsibilities of an electronic filer. As previously discussed, this proposal moves the content of subdivision (a) to rule 8.72. Current rule 8.74(b) authorizes appellate courts to establish requirements for electronic documents, but it sets forth certain minimum format standards such as text searchability. The proposal retains some of the existing language, moves it to a new proposed subdivision (a), and significantly expands the formatting requirements by drawing from the best practices developed among the appellate courts through their local rules.

The expanded formatting rules address topics such as bookmarking, protection of sensitive information, file size, manual filing, font, spacing, margins, hyperlinks, and color. The proposal adds a new subdivision (b) to address specific formatting requirements for briefs, requests for judicial notice, appendices, agreed statements and settled statements, reporter's transcripts, clerk's transcripts, exhibits, and sealed and confidential records. Subdivision (c) provides that a court will reject an electronic filing if the formatting rules are not followed and provides that an electronic filer can file a motion for an exemption. Newly proposed subdivision (d) of rule 8.74 provides that this rule prevails over other formatting provisions if they are in conflict.

Proposed rule 8.74(a)(1) references portable document format (PDF), a file format used to present and exchange documents reliably, independent of software, hardware, or operating system. Existing California Supreme Court and Courts of Appeal local rules require documents to be in "text-searchable PDF." To ensure text searchability, the proposal requires a filer to "convert" a paper document to electronic form, rather than scanning a printed document.

The rules for pagination in proposed subdivision (a)(2) are consistent with the local rule pagination requirements around the state.

Proposed subdivision (a)(3) defines an electronic bookmark and includes requirements for bookmarking specified parts of a document. A new advisory committee comment provides examples of what is intended by the requirement that the bookmark contain a brief description of the item to which it is linked.

Proposed subdivision (a)(4) requires protection of sensitive information found in other rules, namely, rules 1.201, 8.45, 8.46, 8.47, and 8.401.

Proposed subdivision (a)(5) sets a file-size limit of 25 megabytes. The 25-megabyte limit is the current capacity of a file in the Appellate Court Case Management System (ACCMS).

Proposed subdivision (a)(6) describes manual filing of oversized documents or documents that otherwise cannot be electronically filed. The proposal permits the filer to file a flash drive, DVD, or compact disc (CD) with the court and then give notice of the filing. The term DVD is considered sufficiently descriptive that it is not spelled out, but the term CD is spelled out for clarity. The file types for video, audio, and photographs are based on local rules and the current capacity at the courts.

Proposed subdivision (a)(7) specifies that the page size for all electronic documents must be 8-1/2 by 11 inches.

Proposed subdivision (a)(8) describes the font type and font size for electronic documents. It requires a serif font such as Century Schoolbook. The suggestion comes from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability.

Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.

Proposed rule 8.74(b) addresses specific format requirements for certain documents. Proposed rule 8.74(b) does not repeat the general formatting rules when discussing the specific documents.

Rule 8.204. Contents and form of briefs

Rule 8.204 explains the requirements for briefs filed in the Courts of Appeal. There is only one amendment in this rule. The proposed amendment explains that briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in rule 8.204(b).

Rule 8.252. Judicial notice; filings and evidence on appeal

Rule 8.252 establishes the procedure for seeking judicial notice of a matter. The proposed amendment would require the moving party to attach to the motion a copy of the matter to be noticed or an explanation why it is not practicable to do so. In addition, the proposed amendment would specify that the motion with attachments must comply with rule 8.74 if filed in electronic form.

Proposed rule 8.252(c)(3) is reorganized to reflect the presumption of electronic filing unless an exemption applies.

Alternatives Considered

The committee considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The revised rules will provide uniform

guidance to litigants and practitioners, and will give the appellate courts time to amend their local rules accordingly.

Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.

Fiscal and Operational Impacts

The proposed changes are intended to make electronic formatting rules consistent in the appellate courts. The committees anticipate efforts will be needed to amend local rules to make them consistent with these proposals.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, at pages 6–15

Rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.40. Form of filed documents

(a) Form of electronic documents

~~Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).~~

Under rule 8.71(a), a document filed in a reviewing court must be in electronic form unless these rules provide otherwise. An electronic document must comply with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.

(b) Form and cover color of paper documents

(1) To the extent these rules authorize the filing of a paper document in a reviewing court, the document must comply with the relevant format provisions of this rule and rules 8.144 and 8.204.

~~(1)~~(2) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

(~~2~~)(3) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(~~3~~)(4) A paper brief or petition not conforming to ~~(1) or~~ (2) or (3) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

(c) Cover information for electronic and paper documents

(1)–(2) * * *

(3) The covers of electronic documents must also comply with the provisions of rule 8.74.

Rule 8.44. Number of copies of filed documents

(a)–(b) * * *

(c) Electronic copies of paper documents

~~A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition,~~ Even when filing a paper document is permissible, a court may provide by local rule for the submission of an electronic copy of ~~a document that is not electronically filed~~ the paper document either in addition to the copies of the document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must ~~specify the format of the electronic copy and~~ provide for an exception if it would cause undue hardship for a party to submit an electronic copy.

Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court.

(b)–(g) * * *

Rule 8.72. Responsibilities of court and electronic filer

(a) ~~Publication of electronic filing requirements~~ Responsibilities of court

(1) The court will publish, in both electronic and print formats, the court's electronic filing requirements.

~~(b) Problems with electronic filing~~

(2) If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(b) Responsibilities of electronic filer

Each electronic filer must:

(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.74. ~~Responsibilities of electronic filer~~ Format of electronic documents

~~**(a) Conditions of filing**~~

~~Each electronic filer must:~~

~~(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;~~

~~(2) Furnish information that the court requires for case processing;~~

~~(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;~~

~~(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and~~

~~(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.~~

~~**(b) Format of documents to be filed electronically**~~

~~(1) A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.~~

~~(2) The format adopted by a court must meet the following minimum requirements:~~

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

(a) Format requirements applicable to all electronic documents

(1) *Text-searchable portable document format*: Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer's responsibility to ensure that any document filed is complete and readable.

(2) *Pagination*: The electronic page counter for the electronic document must match the page number for each page of the document. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; for example, they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed

in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

(3) *Bookmarking*: An electronic bookmark is a descriptive text link that appears in the bookmarks panel of an electronic document. Each electronic document must include an electronic bookmark to each heading, subheading, and to the first page of any component of the document, including any table of contents, table of authorities, petition, verification, memorandum, declaration, certificate of word count, certificate of interested entities or persons, proof of service, exhibit, or attachment. Each electronic bookmark must briefly describe the item to which it is linked. For example, an electronic bookmark to a heading must provide the text of the heading, and an electronic bookmark to an exhibit or attachment must include the letter or number of the exhibit or attachment and a brief description of the exhibit or attachment. An electronic appendix must have bookmarks to the indexes and to the first page of each separate exhibit or attachment. Exhibits or attachments within an exhibit or attachment must be bookmarked. All bookmarks must be set to retain the reader's selected zoom setting.

(4) *Protection of sensitive information*: Electronic filers must comply with rules 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive information, except for those requirements exclusively applicable to paper format.

(5) *Size and multiple files*: An electronic filing may not be larger than 25 megabytes. This rule does not change the limitations on word count or number of pages otherwise established by the California Rules of Court for documents filed in the court. Unless a 300-page limit applies to the volumes of an electronic document (see, e.g., rules 8.124(d)(1), 8.144(b)(6)), a file may exceed 300 pages so long as it does not exceed 25 megabytes. If a document exceeds the 25-megabyte file-size limitation, the electronic filer must submit the document in more than one file, with each file 25 megabytes or less. The first file must include a master chronological and alphabetical index stating the contents for all files. Each file must have a cover page setting forth (a) the file number for that file, (b) the total number of files for that document, and (c) the page numbers contained in that file. (For example: File 1 of 4, pp. 1–400.) In addition, each file must be paginated consecutively across all files in the document, including the cover pages for each file. (For example, if the first file ends on page 400, the cover of the second file must be page 401.) If a multiple-file document is submitted to the court in both electronic and paper formats, the cover pages for each file must be included in the paper documents.

(6) *Manual Filing*:

(A) When an electronic filer seeks to file an electronic document consisting of more than five files, or when the document cannot or should not be electronically filed in multiple files, or when electronically filing the document would cause undue hardship, the document must not be electronically filed but must be manually filed with the court on electronic media such as a flash drive, DVD, or compact disc (CD). When an electronic filer files one or more documents on electronic media such as a flash drive, DVD, or CD with the court, the electronic filer must electronically file, on the same day, a "manual filing notification" notifying the court and the parties that one or more documents have been filed on electronic media, explaining the reason for the manual filing. The electronic media must be served on the parties in accordance with the requirements for service of paper documents. To the extent practicable, each document or file on the electronic media must comply with the format requirements of this rule.

(B) Electronic media files such as audio, video, or PowerPoint, and documents containing photographs or any color component, must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format. Photographs must be filed in .jpg, .png, .tif, or .pdf format.

(7) *Page size*: All documents must have a page size of 8-1/2 by 11 inches.

(8) *Font*: The font style must be a proportionally spaced serif face, such as Century Schoolbook. Do not use Times New Roman. Font size must be 13-point, including in footnotes.

(9) *Spacing*: Lines of text must be 1-1/2 spaced. Footnotes and quotations may be single-spaced.

(10) *Margins*: The margins must be set at 1-1/2 inches on all sides.

(11) *Alignment*: Paragraphs must be left-aligned, not justified.

(12) *Hyperlinks*: Hyperlinks are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and should be formatted to standard citation format as provided in the California Rules of Court.

(13) *No color*: Notwithstanding provisions to the contrary in the California Rules of Court, an electronic document with any color component may not be electronically filed. It must be manually filed on electronic media. An electronically filed document must not have color covers, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks.

(b) Additional format requirements for certain electronic documents

(1) *Brief*: In addition to compliance with this rule, an electronic brief must also comply with the requirements set forth in rule 8.204, except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b)(2), (4), (5), and (6).

(2) *Request for judicial notice or request or motion supported by documents*: When seeking judicial notice of documents or when a request or motion is supported by documents, the electronic filer must attach the documents to the request or motion. The request or motion and its attachments must comply with this rule.

(3) *Appendix*: The format of an appendix must comply with this rule, rule 8.124(d), and rule 8.144 pertaining to clerk's transcripts.

(4) *Agreed statement and settled statement*: The format for an agreed statement or a settled statement must comply with this rule and rules 8.144 and 8.124(d).

(5) *Reporter's transcript and clerk's transcript*: The format for an electronic reporter's transcript must comply with Code of Civil Procedure section 271 and rule 8.144. The format for an electronic clerk's transcript must comply with this rule and rule 8.144.

(6) *Exhibits*: Electronic exhibits must be submitted in volumes no larger than 25 megabytes, rather than as individual documents.

(7) *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are confidential or under seal must be filed separately. If one or more pages are omitted from a source document and filed separately as a sealed or confidential record, an omission page must be inserted in the source document at the location of the omitted page or pages. The omission page must identify the type of pages omitted. The omission page must be paginated consecutively with the rest of the source document, it must be bookmarked, and it must be listed in any indexes included in the source

document. The PDF counter for the omission page must match the page number of the omission page. Separately filed confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.

(c) Rejection of an electronic filing for noncompliance; exemptions

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

(d) This rule prevails over other formatting rules

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

Advisory Committee Comment

Subdivision (a)(3). An electronic bookmark's brief description of the item to which it is linked should enable the reader to easily identify the item. For example, if a declaration is attached to a document, the bookmark to the declaration might say "Robert Smith Declaration," and if a complaint is attached to a document as an exhibit, the bookmark to the complaint might say "Exhibit A, First Amended Complaint filed 8/12/17."

Subdivision (b)(7). In identifying the type of pages omitted, the omission page might say, for example, "probation report" or "*Marsden* hearing transcript."

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

(1)–(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1)–(2) * * *

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. ~~The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.~~ The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted,~~ an electronic copy~~.~~, or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

Item number: 08

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Service Copy of a Petition for Review
Amend California Rules of Court, rules 8.500

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Information Technology 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, 2019
Project description from annual agenda: Amend rule 8.500(f)(1) to remove the requirement of a separate service copy of a petition for review. Once the Supreme Court accepts a petition for review for filing, the Court of Appeal automatically receives a filed/endorsed copy of the petition. The filing of the petition satisfies the service requirements for the Court of Appeal. This project is intended to eliminate an inefficiency. Source of the project: Colette Bruggman, Assistant Clerk/Administrator, Third District Court of Appeal. Second year of a current priority 2 project/completion date of January 1, 2020. Subcommittee: JATS.

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

SPR19-08

Title
Appellate Procedure: Service Copy of a Petition for Review

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.500

Proposed Effective Date
January 1, 2020

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

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

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

Executive Summary and Origin

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This proposal originated from a suggestion submitted by an appellate court administrator.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that "[t]he petition must also be served on the superior court clerk and the

clerk/executive officer of the Court of Appeal."[1] This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.[2] However, under rule 8.71 of the California Rules of Court and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its webpage, the Supreme Court provides this advisement:

> Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

The Proposal

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer, and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

> The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

Alternatives Considered

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

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[1] An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

[2] Rule 28 was renumbered as rule 8.500 in 2007.

Fiscal and Operational Impacts

This proposal should not have appreciable implementation costs, and should save court resources by eliminating duplicate electronic filings.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4

Rule 8.500 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Title 8. Appellate Rules

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

Chapter 9. Proceedings in the Supreme Court

Rule 8.500. Petition for review

(a)–(e) * * *

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)–(3) * * *

(g) * * *

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954
Approve Form ADR 200

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, 2019
Project description from annual agenda: Senate Bill 954, which the committee previously provided technical assistance on, requires attorneys representing a client participating in a mediation or a mediation consultation to provide that client with a printed disclosure containing information about the confidentiality of mediations. Rules and forms will be reviewed to determine whether they need to be amended in light of the new law.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

SPR19-09

Title
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954

Proposed Rules, Forms, Standards, or Statutes
Approve form ADR-200

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

Action Requested
Review and submit comments by June 10, 2019.

Proposed Effective Date
January 1, 2020

Contact
Kristi Morioka, Attorney, Legal Services
916-643-7056 phone
kristi.morioka@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes a new form for Judicial Council approval, *Mediation Disclosure Notification and Acknowledgment* (form ADR-200). This optional form serves to facilitate parties in implementing the requirements of Senate Bill 954 (Stats. 2018, ch. 350), which requires attorneys to provide their clients with specific written mediation confidentiality disclosures when they are representing clients in connection with mediation.

Background

In 2017, the California Law Revision Commission made a recommendation to the Legislature that the statutes regarding confidentiality of mediation be revised to permit disclosure of otherwise confidential communications in a State Bar disciplinary proceeding or a cause of action for damages based on a claim of malpractice. This recommendation was vehemently opposed by many and was not enacted. However, the Legislature decided to address some of the concerns reflected in that recommendation—concerns that consumers were not always aware that they would not be able to use the communications in a mediation in a later challenge to that attorney's actions. SB 954 was enacted to create a way to improve consumer awareness regarding the confidentiality of the mediation process.

On September 11, 2018, Governor Brown signed SB 954 into law, requiring attorneys to provide their clients with specific written mediation confidentiality disclosures when they are

representing clients in mediation.. The law, which went into effect January 1, 2019, amends Evidence Code section 1122 and adds section 1129 requiring printed disclosures to mediation participants concerning mediation confidentiality.

The Proposal

The Evidence Code carries the strong legislative sentiment that what happens in mediation should remain confidential. The rationale is that to encourage honest communication in furtherance of settling a case, the parties should feel free to express themselves without risk that the settlement discussions will prejudice them if the negotiations fail. Because this confidentiality also means that the communications cannot be used in any civil actions against the attorney, SB 954 requires an attorney representing a client participating in mediation to provide a disclosure informing the client of those restrictions, warning that the communications cannot be used even if the client later seeks to sue the attorney in a malpractice action. SB 954 provides the following in new Evidence Code section 1129:

- An attorney must provide the disclosures to the client before the client agrees to participate in mediation if the attorney represents the client at the time;
- An attorney must provide the disclosures after being retained if the attorney is retained after the client agrees to participate in mediation;
- The disclosure requirement does not apply in class or representative actions;
- The printed disclosure must meet specified format requirements (12-point font; be in the preferred language of the client; be on a single, discrete page; and include the names and signatures of attorney and client); and
- A disclosure that uses the text set out in the statute and meets the specified format requirements is deemed to comply with the statute.

The bill also amends Evidence Code section 1122(a) to allow a further exception to the confidentiality provisions for evidence relating to the attorney's compliance with new section 1129.[1]

The point of the form and notice is to inform the client that anything said at a mediation not only cannot be used against the client, but also cannot be used against the attorney. The concern is that parties may not realize that the communications can never be used against an attorney even if the attorney commits malpractice and the party is willing to waive the confidentiality. The goal is to give the information to the client as early as possible, so the client can decide whether he or she wants to engage in mediation.

The proposed optional form would provide attorneys with a uniform document to provide to their clients that complies with the Evidence Code eliminating the need to create their own disclosure statement. This would also eliminate the need for courts to develop local forms, if they chose to

[1] SB 954 may be viewed at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB954*.

do so voluntarily. The committee concluded that the form would provide uniformity and consistency.

Evidence Code section 1129 requires that an attorney representing a client who is participating in mediation must provide the client with a printed disclosure with the confidentiality provisions described in this code section and obtain a signed acknowledgment that the client has read and understands the restrictions. The proposed form contains the text that the statute provides as a safe harbor, and conforms to the layout requirements of the statute that the disclosure and acknowledgment must:

- Be printed in at least 12-point font;
- Be printed on a single page that is not attached to any other document provided to the client;
- Include the names of the attorney and the client;
- Be signed and dated by the attorney and the client; and
- Contain text substantially similar to the text stated in the disclosure form set out in the statute.

The form complies with the above requirements in that it is a simple one-page document in 12-point font, not attached to another document. It includes the name of the attorney and client and a place for the client to sign and a place for the attorney to sign. The form also contains a heading for the attorney to complete. There is a section for the information regarding the confidentiality restrictions and a section for the client to acknowledge he or she has received and understands the information. There are signature lines for the client and the attorney. Two signature lines are provided for attorneys in the event that more than one attorney represents the client in the matter. The committee is seeking input on whether there should be lines for multiple clients or whether each client should sign a separate acknowledgment.

The statute also requires that the form be presented in the preferred language of the client; under the current proposal, it will be up to each attorney to determine if the form should be translated and in what language to provide it.

Alternatives Considered

The committee noted that the statute does not require action on the part of the Judicial Council but ultimately decided that, for the sake of consistency and uniformity and to promote disclosure requirements, an optional form provided the best solution for the legal community as a whole.

The committee also considered whether any changes to rules or ethical standards were appropriate considering the new mediation disclosure requirements, but ultimately decided that the statute did not require any changes to be implemented.

Fiscal and Operational Impacts

The committee does not foresee any fiscal impacts to the courts because the form is optional and not for court use. For that same reason, limited training needs are anticipated.

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 there be multiple signature lines for multiple clients or should each client sign a separate acknowledgment?
- Should there be signature lines for more than one attorney? The form currently has signature space for up to two attorneys.

Attachments and Links

1. Form ADR-200, at page 5
2. Senate Bill 954, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB954*

ATTORNEY NAME:	STATE BAR NO.:
FIRM NAME:	
STREET ADDRESS:	
CITY:	STATE: ZIP CODE:
TELEPHONE NO.:	E-MAIL ADDRESS:

ADR-200

DRAFT
03-28-19

MEDIATION DISCLOSURE NOTIFICATION AND ACKNOWLEDGMENT

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

Acknowledgment: I, _____ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

Date:

_____ ▶ _____
(TYPE OR PRINT CLIENT NAME) (SIGNATURE OF CLIENT)

Date:

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

Date:

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

Form Approved for Optional Use
Judicial Council of California
ADR-200 [New January 1, 2020]

Item number: 10

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Separate Statements for Discovery Motions

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, chair

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: 10/19/18
Project description from annual agenda: Discovery Motions. Assembly Bill 2230 authorizes courts to allow parties to use certain procedures in making motions to compel discovery that are different than those currently required by rule of court. The pertinent rules 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

SPR19-10

Title Civil Practice and Procedure: Separate Statements for Discovery Motions	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 3.1345	Proposed Effective Date January 1, 2020
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends that California Rules of Court, rule 3.1345, be amended, effective January 1, 2020, to reflect the change in law regarding separate statements in discovery motions enacted in Assembly Bill 2230 (Stats. 2018, ch. 317). That bill amends three sections of the Code of Civil Procedure to expressly provide that courts, for certain types of discovery, may allow the moving party to submit an outline of the discovery requests and responses in dispute rather than the separate statement currently required by rule. The rule reflects those changes and expands them to additional types of discovery.

The Proposal

Currently, rule 3.1345(a)[1] requires that in almost all motions involving the content of a discovery request or the responses to such a request, the moving party must include with the motion a separate statement containing the text of the request; the response, including any objections thereto; a statement of the factual and legal reasons for compelling further responses; and the text of any definition or instructions necessary for the court to understand the discovery requests or responses at issue. The intent of the rule is to ensure that the separate statement accompanying a discovery motion is "full and complete so that no person is required to review any other document in order to determine the full request and the full response." (Rule 3.1345(c).) In some instances, parties have believed that the rule results in unnecessary repetition, and so have asked courts for leave to submit alternative documents in place of the separate statement. Assembly

[1] Unless otherwise noted, all rule references hereafter are to the California Rules of Court, and all statutory references are to the Code of Civil Procedure.

Bill 2230 now expressly authorizes courts to accept an alternative to the separate statement for motions to compel further responses to the three most common types of discovery requests: interrogatories (§ 2030.300(b)(2)), demands for inspection or copying, etc. (§ 2031.310(b)(3)); and requests for admissions (§ 2033.290(b)(2)). The new statutes provide that, in those motions, the court may now allow the parties to instead submit a concise outline of the discovery request and each response in dispute rather than a separate statement.

This proposal amends rule 3.1345(b) to provide that a separate statement is not required in discovery motions for which a court has allowed the moving party to submit—in place of a separate statement—a concise outline of the discovery request and each response in dispute. The new statutes become operative on January 1, 2020, so the advisory committee is recommending that the amended rule take effect that same date.

Alternatives Considered

Because AB 2230 amends provisions regarding motions to compel only as to three types of discovery motions, the advisory committee considered the alternative of amending the rule only as to those three types. However, it decided that to amend the rule as to all motions for which separate statements are required was more logical and efficient.

Currently, rule 3.1345 applies to and requires separate statements to be filed in discovery motions:

(1) To compel further responses to requests for admission;
(2) To compel further responses to interrogatories;
(3) To compel further responses to a demand for inspection of documents or tangible things;
(4) To compel answers at a deposition;
(5) To compel or to quash the production of documents or tangible things at a deposition;
(6) For medical examination over objection; and
(7) For issue or evidentiary sanctions.

(Cal. Rules of Court, rule 3.1345(a).)

Although the new statutory provisions expressly provide courts with authority to allow for other types of support (specifically, a concise outline of the requests and disputed responses) for the first three types of motions in the rule, the committee believes that the exception should be extended to all the discovery motions subject to the separate statement rule.[2] If this discretion will be useful to judicial officers on motions to compel further responses to interrogatories, for example, would it not be similarly useful on motions to compel answers at a deposition? The committee sees no reason to limit this judicial discretion to only a few discovery types. The

[2] Because the requirement for separate statements is embodied in the California Rules of Court, not statute, its application can be modified by rule.

legislative history does not appear to indicate that the Legislature saw any need to require separate statements in the discovery types *not* addressed by the new law.[3]

Fiscal and Operational Impacts

The amended rule should have no impact on the courts beyond the training that judicial officers and clerks may require regarding the statutory change.

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 rule extend to all discovery motions in the rule, as proposed?

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?

Attachments and Links

1. Cal. Rules of Court, rule 3.1345, at page 4
2. Link A: Assembly Bill 2230, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2230*

[3] See, for example, Concurrence in Senate Amendments, Assem. Floor Analysis of Assem. Bill 2230 (2017–2018 Reg. Sess.) (Aug. 23, 2018) *http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB2230 .*

Rule 3.1345 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 3.1345. Format of discovery motions

(a) Separate statement required

Any motion involving the content of a discovery request or the responses to such a request must be accompanied by a separate statement. The motions that require a separate statement include a motion:

(1) To compel further responses to requests for admission;

(2) To compel further responses to interrogatories;

(3) To compel further responses to a demand for inspection of documents or tangible things;

(4) To compel answers at a deposition;

(5) To compel or to quash the production of documents or tangible things at a deposition;

(6) For medical examination over objection; and

(7) For issue or evidentiary sanctions.

(b) Separate statement not required

A separate statement is not required under the following circumstances:

(1) ~~w~~When no response has been provided to the request for discovery; or

(2) With a motion for which a court has allowed the moving party to submit—in place of a separate statement—a concise outline of the discovery request and each response in dispute.

(c)–(d) * * *

Item number: 11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Small Claims: Information about Court Interpreters

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: October 19, 2018
Project description from annual agenda: 12 Small Claims: Information about Court Interpreters: Address implementation issues that may result from legislation (Senate Bill 1155) that effectively requires that small claims court cases are to be treated the same as all other civil cases for purposes of ensuring qualifications of interpreters assisting in such cases. Additionally, consider whether various Small Claims forms need to be revised or developed to inform parties on the change in law and to facilitate their requesting interpreters as early as possible in the proceedings.

If requesting July 1 or out of cycle, explain:

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

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INVITATION TO COMMENT

SPR19- 11

Title Small Claims: Information about Court Interpreters	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Revise forms SC-100 and SC-100-INFO	Proposed Effective Date January 1, 2020
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee is proposing revisions to two small claims forms in light of the repeal of Code of Civil Procedure section 116.550 in Senate Bill 1155 (Hueso; Stats. 2018). Previously, that statute had authorized a small claims court to permit another individual, other than an attorney, to assist a party if the court determines that the party does not speak or understand English sufficiently to comprehend the proceedings or give testimony and needs assistance. The law had also required each court to make a reasonable effort to maintain and make available to the parties a list of interpreters who were able and willing to aid parties in small claims actions. SB 1155 repealed section 116.550, and at the same time made all the statutory provisions regarding interpreters in other civil cases applicable to small claims cases. The proposed form revisions would remove all references to the content of this repealed law from the forms and more closely reflect current law.

Background

Prior to enactment of SB 1155, Government Code section 68560.5 expressly excluded small claims cases from the requirement that certified, registered, or provisionally qualified interpreters must be provided for limited English proficient (LEP) litigants in court proceedings. Because courts were not required to use such interpreters in small claims courts—and in fact, for many years, could not provide any court interpreters in most cases—Code of Civil Procedure section 116.550 expressly addressed what courts should do for LEP litigants in small claims cases. Courts (1) could allow the litigants to have other individuals (friends or family members, or other individuals not formally qualified as court interpreters) assist them as informal interpreters;

(2) were to maintain a list of interpreters who were willing to aid parties in small claims cases for little or no fee; and (3) could if no interpreter was available, continue the small claims hearing in order to allow the litigant to obtain assistance on his or her own.

SB 1155 removed the exclusion for small claims cases from the provisions of Government Code section 68560.5, making the provisions of section 68561 applicable to small claims cases; at the same time, it repealed Code of Civil Procedure section 116.550. Under Government Code section 68561, generally a certified or registered court interpreter must be used to interpret in a court proceeding.[1] If one is not available, a court may, following the good cause and qualification procedures adopted in rules of court by the Judicial Council, appoint an interpreter who is not a registered or qualified interpreter.[2] Rule 2.893 of the California Rules of Court allows appointment of provisionally qualified interpreters (those who apply to a court and are found to be qualified to interpret on an ongoing basis for up to six months) or, in certain circumstances, temporary interpreters.[3] While some parties might be able to bring more formally qualified interpreters with them to court (i.e., those that may be "provisionally qualified" by the court), many are unable to pay for such assistance. Temporary interpreters, such as the friends and family members previously permitted under Code of Civil Procedure section 116.550, may be used only to prevent burdensome delay or in other unusual circumstances, when limited to a single "brief, routine matter" that does not involve substantive rights.[4]

The Proposal

Currently, two Judicial Council forms for small claims parties include information directed to parties with limited English proficiency: *Information for the Small Claims Plaintiff* (form SC-100-INFO) and the "Information for the defendant" section of *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100). Each contains the same essential information.

Form SC-100, in the "Information for the defendant" section on page 4, states the following:

> **What if I don't speak English well?** Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

[1] Gov. Code, § 68561(c), (d).
[2] Gov. Code, § 68561(c), (d); Gov. Code, § 68561(f).
[3] Temporary interpreters are individuals who are not certified, registered, or provisionally qualified, but have been found able to interpret for the party on a one-time basis. They may be used to prevent burdensome delay or in other unusual circumstances, if the judge has made specified findings. (Cal. Rules of Court, rule 2.893(d)(4).)
[4] The Advisory Committee Comment for subdivisions (b)(7) and (d)(4) of rule 2.893 explains further: "When determining whether the matter before the court is a 'brief, routine matter' for which a noncertified or nonregistered interpreter who has not been provisionally qualified may be used, the judicial officer should consider the complexity of the matter at issue and likelihood of potential impacts on the LEP person's substantive rights, keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of the proceedings."

Form SC-100-INFO, *Information for the Small Claims Plaintiff*, provides the following on page 2, in the section titled "How to Get Help with Your Case":

> **Interpreters**—If you do not speak English well, ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

The proposal revises the text in both items[5] to include the following:

> Ask the court clerk as soon as possible for a court-provided interpreter. You may use form INT-300 to request an interpreter. If a court interpreter is not available at the time of your trial, it may be necessary to reschedule your trial. You cannot bring your own interpreter for the trial unless the interpreter has previously been certified or registered by the Judicial Council or provisionally qualified by the court. (See Cal. Rules of Court, rule 2.893.)

The proposed text eliminates the reference to the list of interpreters for hire and the informal interpreter who, under the new law, the court will no longer be able to use as an interpreter for small claims trials. The text also warns that there might be a delay while an appropriately qualified interpreter is being located. It ends by noting that, should the party want to bring a private interpreter, the interpreter must meet the same requirements applicable in any other civil trial and cites the rule where those requirements are described.

Alternatives Considered

Because the text no longer reflects current law, the committee never considered *not* revising the items.

The committee did consider the alternative of including an explanation that adults might still be used as temporary interpreters for nonsubstantive proceedings, such as requests for continuances. The committee concluded, however, that the distinction was too complex to explain in this form, and was likely to lead to misunderstandings by LEP parties who might believe they would be able to bring a friend to interpret at the evidentiary hearing, as permitted under prior law.

Fiscal and Operational Impacts

Although SB 1155 itself will have substantial fiscal and operational impacts on the courts, as well as raise access issues for parties, the form revisions will not add to those impacts.

[5] The Spanish-language version of the item on form SC-100 will also be modified when the proposed text is finalized.

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:

- What would the implementation requirements for the revised forms 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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementing the revised forms?

Attachments and Links

1. Forms SC-100 and SC-100-INFO, at pages 5–11
2. Link: Senate Bill 1155, at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1155*

SC-100 Plaintiff's Claim and ORDER to Go to Small Claims Court

Clerk stamps date here when form is filed.

DRAFT

03-21-2019

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

Notice to the person being sued:

- You are the defendant if your name is listed in (2) on page 2 of this form. The person suing you is the plaintiff, listed in (1) on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en (2) de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en (1) de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in (1) and (2) must go to court: *(Clerk fills out section below.)*

Trial Date →

	Date	Time	Department	Name and address of court, if different from above
1.				
2.				
3.				

Date: _____ Clerk, by _____, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- *Before* you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to *www.courts.ca.gov/smallclaims/forms.*
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.

Plaintiff *(list names):*

Case Number:

1 The plaintiff (the person, business, or public entity that is suing) is:

Name: _____ Phone: _____

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

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

If more than one plaintiff, list next plaintiff here:

Name: _____ Phone: _____

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

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

☐ *Check here if more than two plaintiffs and attach form SC-100A.*

☐ *Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.*

☐ *Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.*

2 The defendant (the person, business, or public entity being sued) is:

Name: _____ Phone: _____

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

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

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: _____ Job title, if known: _____

Address: _____ _____ _____ _____
Street *City* *State* *Zip*

☐ *Check here if your case is against more than one defendant, and attach form SC-100A.*

☐ *Check here if any defendant is on active military duty, and write his or her name here:* _____

3 The plaintiff claims the defendant owes $ _____ *. (Explain below):*

a. Why does the defendant owe the plaintiff money?

_____

_____

When did this happen? *(Date):* _____

b. If no specific date, give the time period: *Date started:* _____ *Through:* _____

c. How did you calculate the money owed to you? *(Do not include court costs or fees for service.)*

_____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.*

Plaintiff *(list names):*

Case Number:

4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

☐ Yes ☐ No If no, explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area *(check the one that applies):*

a. ☐ (1) Where the defendant lives or does business.
(2) Where the plaintiff's property was damaged.
(3) Where the plaintiff was injured.
(4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant *or* where the defendant lived or did business when the defendant made the contract.

b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. *(Code Civ. Proc., § 395(b).)*

c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). *(Civ Code, § 1812.10.)*

d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. *(Civ Code, § 2984.4.)*

e. ☐ Other *(specify)*:

6 List the zip code of the place checked in 5 above *(if you know):*

7 Is your claim about an attorney-client fee dispute? ☐ Yes ☐ No
If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here: ☐

8 Are you suing a public entity? ☐ Yes ☐ No
If yes, you must file a written claim with the entity first. ☐ A claim was filed on *(date):*
If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?
☐ Yes ☐ No *If yes, the filing fee for this case will be higher.*

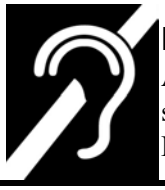
10 Is your claim for more than $2,500? ☐ Yes ☐ No
If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than $2,500 in California during this calendar year.

11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: _____ _____ ▶ _____
Plaintiff types or prints name here *Plaintiff signs here*

Date: _____ _____ ▶ _____
Second plaintiff types or prints name here *Second plaintiff signs here*



Requests for Accommodations

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

SC-100 Information for the defendant (the person being sued)

"Small claims court" is a special court where claims for $10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to $10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of $5,000. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at *www.courts.ca.gov/smallclaims/prepare.*

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible for a court-provided interpreter. You may use form INT-300 to request an interpreter. If a court interpreter is not available at the time of your trial, it may be necessary to reschedule your trial. You cannot bring your own interpreter for the trial unless the interpreter has previously been certified or registered by the Judicial Council or provisionally qualified by the court. (See Cal. Rules of Court, rule 2.893.)

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at *www.courts.ca.gov/smallclaims/forms.*

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration,* to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see *www.courts.ca.gov/smallclaims/appeals.*

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant's Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's 's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled **"Small Claims Court."**
- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

Need help?
Your county's Small Claims Advisor can help for free.

Or go to *www.courts.ca.gov/smallclaims/advisor.*

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

SC-100 Información para el demandado (la persona demandada)

La **"Corte de reclamos menores"** es una corte especial donde se deciden casos por $10,000 o menos. Los individuos, o sea las "personas físicas" y los propietarios por cuenta propia, pueden reclamar hasta $10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta $5,000. (Vea abajo para las excepciones.*) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en www.courts.ca.gov/reclamosmenores/preparese.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accomodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/ smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación* (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si *no* estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea *www.courts.ca.gov/reclamosmenores/apelaciones.*

¿Tengo otras opciones? Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, Solicitud de desestimación (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo.Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entréguelo legalmente al testigo.
- **Demandar a la persona que lo demandó.** Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado "Corte de reclamos menores".
- **Aeptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), *o*
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), *o*
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.

¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O visite *www.courts.ca.gov/reclamosmenores/asesores.*

*** Excepciones:** Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of, and some general information about, the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff.** The person who is sued is the **defendant.** In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than $5,000 if you are a business or public entity or for more than $10,000 if you are a natural person (including a sole proprietor). *(See below for reference to exceptions.*)* If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than $2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem.** This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court. **You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear,* form SC-109.)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue.** Check the court's local rules if there is more than one court location in the county handling small claims cases. If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard. The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken; or
5. For a retail installment account or sales contract or a motor vehicle finance sale:
   a. Where the buyer lives;
   b. Where the buyer lived when the contract was entered into;
   c. Where the buyer signed the contract; or
   d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name.* If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit, at *www.sos.ca.gov/business*. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.
3. With very limited exceptions, the defendant must be served within the state of California.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process.** This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF.** You should read form SC-104B, *What is "Proof of Service"?* Here are four ways to serve the defendant:

1. **Service by a law officer**—You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server**—You may ask anyone who is *not a party* in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will serve papers for a fee. You may also ask a friend or relative to do it.
3. **Certified mail**—You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service**—This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

Form Adopted for Mandatory Use
Judicial Council of California
SC-100-INFO [Rev. January 1, 2020]

Code of Civil Procedure,
§§ 116.110 et seq.,116.220(c), 116.340(g)
www.courts.ca.gov

4. **Substituted service** *(continued)* A copy of your claim must be left at the defendant's business with the person in charge, **OR** at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.
5. **Timing and proof of service**—No matter which method of service you choose, the defendant must be served by a certain date, or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.

   The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant)** will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim.* The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than $5,000, or $10,000 if the defendant is a natural person *(see exceptions on page 1*).* If the value of the claim is more than this amount, the defendant may either give up the amount over $5,000 or $10,000 and sue in the small claims court or sue in the appropriate court for the full value of the claim. If the defendant's claim relates to the same contract, transaction, matter, or event that is the subject of your claim and exceeds the value amount for small claims court, the defendant may file the claim in the appropriate court and file a motion to transfer your claim to that court to resolve both claims together.

The defendant's claim must be served on the plaintiff at least *five days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *one day* before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily, or you may ask the clerk to issue a **subpoena.** A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order before the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and is owed the money is called the **judgment creditor.** The party who loses the case and owes the money is called the **judgment debtor.** Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment*. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

1. **Lawyers**—Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
2. **Interpreters**—If you do not speak English well, ask the court clerk as soon as possible for a court-provided interpreter. You may use form INT-300 to request an interpreter. If a court interpreter is not available at the time of your trial, it may be necessary to reschedule your trial. You cannot bring your own interpreter for the trial unless the interpreter has previously been certified or registered by the Judicial Council or provisionally qualified by the court. (See Cal. Rule of Court, rule 2.893.)
3. **Waiver of fees**—The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court**—If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays.**
5. **Parties who are in jail**—If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations**—If you have a disability and need assistance, immediately ask the court to help accommodate your needs. If you are hearing impaired and need assistance, notify the court immediately.
7. **Forms**—You can get small claims forms and more information at the California Courts Self-Help Center website *(www.courts.ca.gov/smallclaims),* your county law library, or the courthouse nearest you.
8. **Small claims advisors**—The law requires each county to provide assistance in small claims cases free of charge. *(Small claims advisor information):*

Item number: 12

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Case Management Rules

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, chair

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: 10/19/18
Project description from annual agenda: New Civil Tiers and Streamlined Litigation: [excerpt of description relevant to this item] •In this committee year, the committee intends to develop a proposal for amending the current rules on case management conferences and possibly a further legislative proposal concerning motions for partial summary judgment, to be circulated for public comment in spring 2019 and go to the council in September 2019;

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

SPR19-12__

Title Subject Civil Practice and Procedure: Case Management Rules	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 3.720	Proposed Effective Date January 1, 2020
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, chair	Contact Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

In 2013, the Judicial Council amended the statewide rules of court on civil case management to give courts the discretion to exempt certain types or categories of general civil cases from the mandatory case management rules. The amendments were intended as an emergency measure, to help courts to better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. The Civil and Small Claims Advisory Committee, following the recommendation by the Commission on the Future of California's Court System, is proposing that the discretionary exemption be made permanent, to allow flexibility in case management where courts so desire.

Background

The council approved the provision allowing courts to take a temporary exemption from the statewide rules regarding case management in 2013.[1] The initial request to amend the case management rules came from the Superior Court of Los Angeles County in December 2012 and was reiterated by the Superior Court of Sacramento County shortly thereafter. The courts sought relief from the current case management rules applicable to general civil cases.

[1] The background of the prior action is set out in detail in Judicial Council of Cal., Advisory Com. Rep., *Civil Cases: Temporary Suspension of Case Management Rules (*February 26, 2013), which may be found at http://www.courts.ca.gov/documents/jc-20130226-itemC.pdf.

The Superior Court of Los Angeles County particularly wanted the rules relaxed because of its plan—now in place—to remove all personal injury cases, of which it then had over 16,000 pending, from its individual calendar courts (in which general civil cases are assigned to a single judge for all purposes) to two master calendars. [2] The court sought relief from the mandatory case management rules because it had concluded that, with its then very limited resources, it could not continue to provide all general civil cases with the type of individualized case supervision and management envisioned by the rules of court.

While some commentators opposed the exemption in 2013, most were in favor, at least on a temporary basis. The council adopted the proposal at that time and three years later extended it, so that under rule 3.720,[3] a court currently may, by local rule, exempt types or categories of general civil cases from the mandatory case management rules. As the rule currently stands, this exemption applies only to cases filed before January 1, 2020.

Most courts throughout the state have not implemented a local exemption from the case management rules authorized by rule 3.720, and continue to provide the supervision and management of general civil cases through case management conferences as provided for in the state rules of court. At least six courts have implemented local exemptions and suspended the mandated case management procedures for some or all of the general civil cases in their courts for at least part of the time when the exemption has been in effect

- Superior Court of Los Angeles County currently exempts all limited cases from the case management procedures and all personal injury cases, and instead issues individual trial setting orders in each case. (Sup. Ct. of Los Angeles County, Local Rules, rule 3.23.)[4]
- Superior Court of Monterey County exempted all civil cases for a period beginning in June 2013, instead holding a Case Progress Conference, with a statement required from plaintiff only, 180 days after the filing of the complaint. That court is currently back to having the case management rules apply to all cases.
- Superior Court of Sacramento County currently exempts all limited cases and provides alternative procedures on the courts web page for requesting trial setting and arbitration or mediation (Sup. Ct. of Sacramento County, Local Rules, rule 2.21 and 2.52.)
- Superior Court of San Bernardino County previously exempted all general civil cases (all cases the case management rules apply to), but now exempts all unlimited and complex cases, holding a trial setting conference in place of a case management conference in those cases. (Sup. Ct. of San Bernardino County, Local Rules, rule 411.)[5]

[2] The court had concluded that these cases typically require fewer appearances and less direct case management than other types of general civil cases.
[3] Unless otherwise noted, all references to rules herein are to California Rules of Court.
[4] This court reported to the advisory committee that the court finds the exemption of all personal injury cases from the case management rules particularly helpful in the court's efficient processing of those cases, now handled out of only two departments.
[5] This court reports that it would like to continue using this alternate procedure for managing its civil cases.

- Superior Court of San Joaquin currently exempts all limited cases from the case management rules. (Sup. Ct. of San Joaquin County, Local Rules, rule 3-102.A.6.)
- Superior Court of Shasta County exempts all limited and unlimited cases, and provides dates for settlement conference and trial, along with the assignment of a judicial officer, at the time of filing. (Sup. Ct. of Shasta County, Local Rules, rule 3.02.)[6]

The Proposal

The Commission of the Future of California's Court System considered the case management rules in making its recommendations to streamline civil litigation. Looking at how courts were making use of the emergency exemption, the commission recommended keeping the exemption in rule 3.720(b) in place permanently. In its Report to the Chief Justice (Futures Commission Report) the commission stated:

> Robust case management conferences, held early in the case, are useful tools for expediting the litigation process. [fn] However, resource and budget constraints can limit a court's ability to provide such conferences. Therefore, this recommendation retains existing case management rules. For limited cases. this approach allows judicial review of the case management conference statements without requiring the parties to attend a conference. (California Rules of Court, rule 3.720(e).)[7] In intermediate or unlimited cases, conferences should generally be held, unless the court decides not to do so. [fn: This approach would conform to the current rule allowing for emergency exemptions from mandatory case management conferences. (See California Rules of Court, rule 3.720(b).)][8]

In light of this recommendation from the Futures Commission Report, and the directive from the Chief Justice to attempt to further those recommendations, the Civil and Small Claims Advisory Committee proposes that California Rules of Court, rule 3.720(b) be amended, to provide that the emergency suspension of the case management rules currently set to sunset in 2020 be made permanent. Specifically, the amendment would permit any court's local suspension of the case management rules to apply so long as the suspension, and the alternative procedures for trial setting, etc., are made clear in the local rules. This proposal would permit those courts that have

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[6] Superior Court of Shasta County reported that the existence of this statutory exemption made it possible for that court to combine their two civil departments into one. Previously, each of the departments had a weekly CMC calendar, which the court realized would not be possible to continue when a single department was handling all aspects of all civil cases.

[7] The advisory committee notes that several courts apply this rule to all limited cases, providing by local rule that no case management *conferences* are held in such cases, although case managements statements generally need to be filed. See, e.g., Sup. Ct. Of Mendocino County, Local Rules, rule 2.1 and Sup. Ct. of Stanislaus County, Local Rules, rule 3.02.C.

[8] Futures Commission Report, at page 25. The report may be viewed in its entirety at https://www.courts.ca.gov/documents/futures-commission-final-report.pdf.

already made use of this exemption to continue to do so and would permit additional courts to invoke the exemption if they so choose.

This proposal would not in any way change the delay reduction goals set out in Standard 2.1 of the California Standard of Judicial Administration or Government Code section 68607.

The amended rule is attached at page 5.

Alternatives Considered

The committee considered not recommending that the exemptions be made permanent but concluded that, in light of the recommendation in the Futures Commission Report and because several courts are currently using the exemptions as a way to manage cases and want to continue doing so, the authority for the voluntary exemptions should be continued.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not raise any costs or place any operational impacts on the courts. The ability to exempt cases from the case management rules would remain discretionary, and only used if a court determined that it would be of some financial benefit to the court.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee 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 2 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

1. Amended Cal. Rule of Court, rule 3.720

California Rules of Court, rule 3.720 would be amended, effective January 1, 2020, as follows:

Chapter 3. Case Management

Rule 3.720. Application

(a) General application

The rules in this chapter prescribe the procedures for the management of all applicable court cases. These rules may be referred to as "the case management rules."

(b) ~~Emergency~~ sSuspension of rules

A court by local rule may exempt specified types or categories of general civil cases ~~filed before January 1, 2020,~~ from the case management rules in this chapter, provided that the court has in place alternative procedures for case processing and trial setting for such actions, including, without limitation, compliance with Code of Civil Procedure sections 1141.10 et seq. and 1775 et seq. The court must ~~post~~ include the alternative procedures on in its ~~website~~ local rules.

(c) Rules when case management conference set

In any case in which a court sets an initial case management conference, the rules in this chapter apply.

~~**Advisory Committee Comment**~~

~~Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources available to the courts as a result of the current fiscal crisis and is not intended as a permanent change in the case management rules.~~

Deferred

Item number: 14

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 16–17, 2019

Title
Civil Practice and Procedure: Waivers of Court Fees for Court Reporters and Interpreters

Rules, Forms, Standards, or Statutes Affected
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

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
April 3, 2019

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Executive Summary

Recent changes in the law pertaining to a waiver of 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 recommends that two California Rules of Court be amended and nine 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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019:

1. Amend Cal. Rules of Court, rules 2.956 and 3.55 to make changes consistent with *Jameson v. Desta* (2018) 5 Cal.5th 594; and
2. Revise the following forms to make changes consistent with *Jameson* and recent legislation, by replacing the existing language concerning a waiver of reporter's fees and to remove outdated and unnecessary language about a waiver of fees for a court-appointed interpreter in small claims court: FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, and FW-012-GC.

The text of the amended rules and the new and revised forms are attached at pages 13–33.

Relevant Previous Council Action

Effective July 1, 2015, the Judicial Council amended rule 3.55 to consolidate the list of superior court fees relating to appellate matters that are waived as part of an initial fee waiver and add a new statutory requirement that court fees for court reporting services be included in all fee waivers and a related advisory committee comment. At the same time, the council revised forms FW-001-INFO, FW-003, FW-005, FW-008, and FW-012 to reflect the amendments to rule 3.55.

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 Supreme 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.)

The Supreme Court concluded that a superior court must generally make available to fee waiver recipients (1) an official court reporter or other valid means to create an official verbatim record, (2) for purposes of appeal, (3) upon request. (*Jameson, supra,* 5 Cal.5th 594 at p. 599.)

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.

Analysis/Rationale

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 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. (*Ibid*.)

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~~ intended to provide a fee waiver recipient with an official court reporter or other valid means to create an official verbatim record, for purposes of appeal, on a request. (See *Jameson v. Desta* (2018) 5 Cal.5th 594.) ~~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.

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 fee waiver forms that are used in cases other than guardianship and conservatorship cases 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." The fee waiver forms used in guardianship and conservatorship cases (indicated by "GC" in the form number) would be revised to replace the existing language about reporter's fees with "reporter's fee for attendance at hearing or trial, if you request that the court provide an official reporter." Guardianship and conservatorship cases are not permitted to be electronically recorded so it would not make sense to include "if the court is not electronically recording the proceeding" on those forms.

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 4a(1));
3. *Order on Court Fee Waiver (Superior Court) (Ward or Conservatee)* (FW-003-GC) (item 6a(1));
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 5a(1));
7. *Order on Court Fee Waiver After Hearing* (*Superior Court) (Ward or Conservatee)* (FW-008-GC) (item 7a(1) and b(2));
8. *Order on Court Fee Waiver After Reconsideration Hearing* (*Superior Court)* (FW-012) (item 6d(2)); 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 also list "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)).

Policy implications

This proposal would expand access to justice by ensuring that fee waiver recipients have the ability to have a court reporter or other means to create a verbatim record in court proceedings.

Comments

This proposal circulated for comment from December 11, 2018, to February 12, 2019. Eighteen entities or individuals submitted comments. Four commenters agreed with the proposal, eight agreed but suggested modifications, and the remainder did not indicate a position. Commenters included the California State Bar's Commission on Access to Justice, the California Department of Child Support Services (DCSS), numerous legal service and housing advocacy organizations, two local bar associations, the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, four superior courts, and a superior court manager. The following issues were raised by the comments:

1. **Automatic mechanism for ability to create a record without a request**. Several legal service organizations proposed that courts provide court reporters, or another mechanism for verbatim recording of proceedings, to all litigants with fee waivers, without requiring a specific request from the litigant. They stated that unrepresented tenants, for example, are unlikely to recognize the importance of a court reporter in preserving a meaningful right to appeal or pursue other postjudgment remedies. One legal services organization suggested that rule 2.956(c)(2) be amended as follows:

   > If the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, the court shall provide an official reporter for attendance at the proceeding.

   This would be a change to the language in the proposal that circulated for comment. As circulated, rule 2.956 would be amended to provide that a party granted a fee waiver *may request* that the court provide an official reporter if the court is not using an electronic recording. These suggested modifications would require a court to automatically provide

a court reporter (if not electronically recording the proceedings) to a fee waiver recipient. The *Jameson* court held that a fee waiver recipient is entitled to a means to create a verbatim record upon that party's request. The committee discussed this and concluded that because courts do not have a means to identify cases in which a party has been granted a fee waiver, the language should remain as proposed, which requires the party to request a court reporter.

2. **Rule provision that allows party to request a waiver of fees for court reporter or electronic record on fee waiver forms.** Legal services organizations that commented suggested that if the council finds that automatically providing court reporters to all indigent litigants is not possible, the rule should permit fee waiver applicants to request the waiver of court reporter or electronic record fees in the fee waiver form itself.

   The revised forms that the committee proposes for revision are court orders that would allow the waiver of these fees. It is unnecessary for a fee waiver recipient to specifically request waiver of these fees. An item is added to the forms for waiver of "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."

3. **Uniform statewide procedure to request a court reporter.** The invitation to comment asked whether it would be helpful to have a uniform statewide procedure for a party to request a court reporter. Comments varied.

   - The JRS responded that it would not be and that it is sufficient that the forms will be available to every court (apparently referring to the form orders).
   - A superior court responded that courts do not have the ability to provide court reporters in the same manner throughout the state; therefore, flexibility must be allowed so that each court can determine the best way for litigants to request a court reporter be provided.
   - Several legal services organizations responded that that there should be a standing order that court reporters be provided for all litigants with fee waivers. They stated that a second-best alternative would a statewide court reporter request form because it would ensure a uniform and accessible procedure to request a court reporter.
   - The California Department of Child Support Services responded as follows: "A uniform statewide procedure would address inconsistencies and require courts to conform to a unified system."

   The proposal did not include a statewide form. The committee decided that this is something to consider developing for circulation in a future public comment cycle. Some courts currently have such forms that may serve as models.

4. **Addition to rule 3.55 to include waiver of fee for digital copy.** The invitation to comment asked, "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?"

   Several commenters, including legal services organizations, the Orange County Bar Association, and a superior court manager, responded that it should be amended to provide that a waiver of initial fees includes this fee. The DCSS disagreed, stating, "The *Jameson* court was concerned that litigants have access to appellate review; the current rule 3.55 and rule 8.835 address the cost of preparing a transcript or submitting the electronic recording to the appellate court."

   Rule 3.55(11), which was not part of the proposal that circulated for comment, does include among the items that must be waived upon granting an initial fee waiver "[t]he clerk's fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording." Rule 8.835 applies to the record in civil appeals in the appellate division of the superior court when trial proceedings are officially electronically recorded. Electronic recording is permitted in limited civil cases, which are appealed to a superior court's appellate division. Thus, rule 3.55 already includes a waiver of fee for the transcript or copy of an electronic recording and there is no need to add this item.

5. **Amended language in rule 3.55 requiring waiver of "reporter's fee." (**The proposal would amend rule 3.55 as follows: (6) Reporter's fees for attendance at hearings and trials~~, if the reporter is provided by the court~~.")

   A superior court asked, "What is the 'reporter's fee' the court will be paying for, as the new language may be construed to require the courts to pay any fee charged by an outside pro tem reporter or agency providing a pro tem reporter?" The court suggested the following alternative language: "Reporter's fees established (or set) by the court for attendance at hearings and trials."

   The court executive officer of another court commented that deleting the language as proposed in the invitation to comment creates an ambiguity that could be interpreted to mean that the court is responsible for paying for reporters that are not provided by the court. The committee discussed this and determined that no change should be made to further describe the reporters' fees as the law permits only waiver of the fees that are actually paid by the court.

6. **Advisory committee comment to rule 3.55.** Several commenters stated that rather than amending the advisory committee comment it should be removed entirely. They believe that the proposed version of the comment remains confusing and does nothing to clarify the rule itself, which they believe is clear on its own.

The proposal as circulated would amend the advisory committee comment to read 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 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.

The amendment is intended to clarify that the rule does not expand the case types in which an official reporter, rather than electronic recording, is required. The committee agreed that the proposed advisory committee comment could be confusing and therefore recommends that it be amended to use language in the *Jameson* opinion and to cite that case, 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~~ intended to provide a fee waiver recipient with an official court reporter or other valid means to create an official verbatim record, for purposes of appeal, on a request. (See *Jameson v. Desta* (2018) 5 Cal.5th 594.) ~~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.

7. **Fee waiver does not included transcript costs.** The San Diego Bar Association Appellate Practice Section suggested adding a sentence "in the explanation pages" to clarify that the fee waiver only applies to the cost to have a court reporter attend the trial court proceedings and take shorthand notes and does not include the cost to transcribe those shorthand notes into the official reporter's transcript that may be part of the record on appeal.

   The committee discussed this and decided it was unnecessary to make this change.

8. **Clarify type of electronic recording in rule 2.956 reference.** The California Department of Child Support Services commented that some electronic recordings may only be used to monitor personnel, under Government Code section 69957(b). Because of this, the commenter suggested that rule 2.956(c)(2) be modified to make clear that a court's use of electronic recording that would result in a fee waiver recipient not being entitled to an official reporter does not include use of electronic recording solely for court internal personnel reasons under Government Code section 69957(b).

The committee discussed this and decided it was unnecessary to make this change, as nothing in the rule suggests that an electronic recording under Government Code section 69957(b) may be used to provide a verbatim record of the proceedings to an appellant granted a fee waiver.

Alternatives considered

In addition to alternatives raised by public comments and discussed above, the advisory committee considered generally how best to amend the rule text and advisory committee comment 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. The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee submitted a comment stating that courts will have to find a way to provide reporters in these civil cases and this will compete with the requirement to provide reporters in other cases. The reporters will have to work more cases or the court will need to potentially hire more reporters. It will result in an increased court staff workload. The Superior Court of Los Angeles County quantified the impact in its comment as follows: implementation would require 16 hours to draft the request form, process, and procedure. In addition, 30 minutes to one hour of training would be needed for public counter staff, courtroom clerks, and the court reporter services unit on process and procedure.

In addition, some costs will result from the need to replace outdated forms if the court provides paper copies of forms

Attachments and Links

1. Cal. Rules of Court, rules 2.956 and 3.55, at pages 11–12
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 13–33
3. Chart of comments, at pages 34–91

Rules 2.956 and 3.55 of the California Rules of Court are amended, effective September 1, 2019, to read:

Rule 2.956. Court reporting services in civil cases

(a) Statutory reference; application

This rule is adopted solely to effectuate the statutory mandate of Government Code sections 68086(a)–(b) and must be applied so as to give effect to these sections. It applies to trial courts.

(b) * * *

(c) Party may procure reporter or request reporter if granted fee waiver

If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may:

(1) Arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is that party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law.; or

(2) In compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings, if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial.

(d)–(e) * * *

Rule 3.55. Court fees and costs included in all initial fee waivers

Court fees and costs that must be waived upon granting an application for an initial fee waiver include:

(1)–(4) * * *

~~(5) Court-appointed interpreter's fees for parties in small claims actions;~~

~~(6)~~(5) * * *

~~(7)~~(6) Reporter's fees for attendance at hearings and trials~~, if the reporter is provided by the court~~;

~~(8) (10)~~(7)-(9) * * *

~~(11)~~(10) The clerk's fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording.

Advisory Committee Comment

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~~ intended to provide a fee waiver recipient with an official court reporter or other valid means to create an official verbatim record, for purposes of appeal, on a request. (See *Jameson v. Desta* (2018) 5 Cal.5th 594.) ~~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
   - Giving notice and certificates
   - Sheriff's fee to give notice
   - Sending papers to another court department
   - 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

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, § 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.

FW-003 Order on Court Fee Waiver (Superior Court)

Clerk stamps date here when form is filed.

DRAFT

3-25-2019

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, firm 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 **grant**s 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
- Court fee for phone hearing
- 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 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
☐ Fees for a peace officer to testify in court
☐ Court-appointed interpreter fees for a witness
☐ Other *(specify):* _____

b. ☐ The court **denies** your fee waiver request because:

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) ☐ Your request 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 incomplete items listed:
  ☐ Below ☐ On Attachment 4b(1)

(2) ☐ The information you provided on the request shows that you are not eligible for the fee waiver you requested for the reasons stated: ☐ Below ☐ On Attachment 4b(2)

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. (1) ☐ The court needs more information to decide whether to grant your request. You must go to court on the date on page 3. The hearing will be about the questions regarding your eligibility that are stated:
☐ Below ☐ On Attachment 4c(1)

(2) ☐ Bring the items of proof to support your request, if reasonably available, that are listed:
☐ Below ☐ On Attachment 4c(2)

This is a Court Order.

Your name: _____

Case Number:

Name and address of court if different from above:

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

Warning! If item c(1) 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 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's Certificate of Service

I certify that I am not involved in this case and *(check one):*

☐ 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.

☐ A certificate of mailing is attached.

Date: _____

Clerk, by _____ , Deputy
Name: _____

This is a Court Order.

FW-003-GC **Order on Court Fee Waiver (Superior Court) (Ward or Conservatee)**

Clerk stamps date here when form is filed.

DRAFT

03-25-2019

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 **grant**s 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.)

6 a. (1)
- Reporter's fee for attendance at hearing or trial, if 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.

☐ 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 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 ☐ On Attachment 6b(1)

(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 for the reasons specified:
☐ Below ☐ On Attachment 6b(2)

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. (1) ☐ The court needs more information to decide whether to grant your request. You must go to court on the date on page 3. The hearing will be about questions regarding your eligibility specified:
☐ Below ☐ On Attachment 6c(1)

(2) ☐ Bring the items of proof to support your request, if reasonably available, that are listed:
☐ Below ☐ On Attachment 6c(2)

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.

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

Name and address of court if different from above:

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):*

☐ 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.

☐ A certificate of mailing is attached.

Date: _____

Clerk, by _____, Deputy
Name: _____

This is a Court Order.

FW-005-GC **Notice: Waiver of Court Fees (Superior Court) (Ward or Conservatee)**

Clerk stamps date here when form is filed.

DRAFT

2-11-2019

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

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: _____

3 (Proposed) ward or conservatee:

Name: _____
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 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 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: _____

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):*

☐ 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.

☐ A certificate of mailing is attached.

Date: _____

Clerk, by _____ , Deputy

Name: _____

FW-005 Notice: Waiver of Court Fees (Superior Court)

Clerk stamps date here when form is filed.

DRAFT

02-15-2019

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

(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, firm name, address, phone number, e-mail, and State Bar number):*

_____

_____

_____

_____

_____

_____

(3) Your *Request to Waive Court Fees* was filed on *(date):*

_____

(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
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone 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 rules 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835

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):*

☐ 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. ☐ A certificate of mailing is attached.

Date: _____ Clerk, by _____, Deputy

FW-008 Order on Court Fee Waiver After Hearing (Superior Court)

Clerk stamps date here when form is filed.

DRAFT

03-25-2019

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, firm name, address, phone number, e-mail, and State Bar number):*

_____

_____

_____

_____

_____

_____

Fill in court name and street address:

Superior Court of California, County of

3 A request to waive court fees was filed *(date):* _____

Fill in case number and name:

Case Number:

Case Name:

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):* _____

_____

_____

☐ Additional persons present listed on Attachment 4.

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
- Giving notice and certificates
- Sending papers to another court department
- Court fees for phone 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 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 recording under rule 8.835

Case Name:	Case Number:

5 a. (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

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. You did not provide all of the information that the court requested. This missing items are specified: ☐ Below ☐ On Attachment 5b(1)(a)

(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. ☐ The reasons stated: ☐ Below ☐ On Attachment 5b(1)(c)(ii)

(d) ☐ There is not enough evidence to support a fee waiver.

(e) ☐ Other reasons stated: ☐ Below ☐ On Attachment 5b(1)(e)

(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.

Case Name:	Case Number:

5 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 for the reasons stated: ☐ Below ☐ On Attachment 5c

(1) ☐ You must pay _____ percent of your 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
- ☐ 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
- ☐ Reporter's fee for attendance at trial or hearing by reporter provided by the court
- ☐ Other fees *(specify):* _____

(3) ☐ Other orders as specified: ☐ Below ☐ On Attachment 5c(3)

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):*

☐ 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.

☐ A certificate of mailing is attached.

Date: _____

Clerk, by _____, Deputy

Name: _____

FW-008-GC **Order on Court Fee Waiver After Hearing (Superior Court) (Ward or Conservatee)**

Clerk stamps date here when form is filed.

DRAFT

04-03-2019

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:

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

(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):* ☐ Additional persons present listed on Attachment 6.

Read this form carefully. All checked boxes [X] 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.

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
- Court fees for phone hearing
- Sheriff's fee to give notice
- Giving notice and certificates
- Reporter's fee for attendance at hearing or trial, if 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 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.

☐ Jury fees and expenses
☐ Fees for court-appointed experts
☐ Fees for a peace officer to testify in court
☐ Court-appointed interpreter fees for a witness
☐ Other*: (specify):* _____

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. You did not provide all of the information that the court requested. The missing items are specified: ☐ Below ☐ On Attachment 7b(1)(a)

_____
_____
_____

(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. ☐ The reasons stated: ☐ Below ☐ On Attachment 7b(1)(c)(ii)

_____
_____
_____
_____

(d) ☐ There is not enough evidence to support a fee waiver.

(e) ☐ Other reasons stated: ☐ Below ☐ On Attachment 7b(1)(e)

_____
_____
_____

7 b. (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.

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 for the reasons stated: ☐ Below ☐ On Attachment 7c

_____

_____

_____

(1) ☐ You must pay _____ percent 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
☐ 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
☐ Reporter's fee for attendance at trial or hearing, if you request that the court provide an official reporter
☐ Other fees *(specify):* _____

(3) ☐ Other orders as specified: ☐ Below ☐ On Attachment 7c(3)

_____

_____

_____

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):*

☐ 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.

☐ A certificate of mailing is attached.

Date: _____ Clerk, by _____, Deputy
Name: _____

FW-012 Order on Court Fee Waiver After Reconsideration Hearing (Superior Court)

Clerk stamps date here when form is filed.

DRAFT

03-25-2019

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

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, firm name, address, phone number, e-mail, and State Bar number):*

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):*

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):*

☐ Additional persons present listed on Attachment 5.

Read this form carefully. All checked ☑ boxes are court orders.

6 After considering the information provided at the hearing, **the court makes the following orders:**

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 for the reasons stated: ☐ Below ☐ On Attachment 6b

(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.

6 c. ☐ **Fee Waiver Is Retroactively Withdrawn.** The court finds that you were never entitled to a fee waiver in this case for the reasons stated: ☐ Below ☐ On Attachment 6c

(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.

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 fees *(specify):* _____

(3) ☐ Other modifications as ordered: ☐ Below ☐ On Attachment 6d(3)

e. ☐ **Other Orders as stated:** ☐ Below ☐ On Attachment 6e

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)*:

☐ 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.

☐ A certificate of mailing is attached.

Date: _____

Clerk, by _____ , Deputy

Name: _____

	Commentator	Position	Comment	Committee Response
1.	California Commission on Access to Justice by Hon. Mark Juhas, Chair San Francisco, CA	AM	We join in the comment letter submitted by Legal Aid Association of California and the Family Violence Appellate Project, and wholly endorse their recommendations. We write separately, however to emphasize our belief that a rule embedding a default of providing court reporters to indigent self-represented litigants (without the need to request them) is required by Jameson, and is not merely a more expeditious way to implement the Jameson decision. The Supreme Court enjoined in Jameson that: "The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services." (Jameson v. Desta (2018) 5 Cal.5th 594, 607, citing Bus. & Prof. Code, § 68630, subd. (b).) The recommendations of the Civil and Small Claims Advisory Committee fall short because they presume self-represented litigants possess a legal understanding of the significance of a record of the oral proceedings in their cases, and can exercise an educated decision about whether to request a court reporter. These assumptions are incorrect.	Please see committee responses to comments submitted by Legal Aid Association of California and the Family Violence Appellate Project.

			The Committee's proposals would replace a financial barrier to appellate due process with an educational penalty that equally denies due process, and that denial is no less significant to the litigant. Inasmuch as the proposed rule changes are intended to implement the Jameson decision, which is wholly predicated upon ensuring equal access to justice, the changes do not adequately address their stated purpose, and should be amended in the manner suggested by LAAC and FVAP.	
2.	California Women's Law Center by Amy Poyer, Sr. Staff Attorney El Segundo, CA	AM	CWLC is in full agreement with, and echoes the statements contained in, the comments submitted today jointly by the Family Violence Appellate Project (FVAP) and the Legal Aid Association of California (LAAC).	The committee appreciates the comment.
3.	Department of Child Support Services State of California by Kristen Donadee Assistant Chief Counsel	NI	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the Child Support Program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the rules and forms with potential impacts to the Department and its stakeholders follows: It appears that a technical oversight may have been made in the proposed rule. As Government Code section 69957(b) authorizes courts to use electronic recording to monitor personnel but prohibits the use of those recordings for any other purpose; the language use in the proposed rule and forms may inadvertently preclude indigent parties from a verbatim record as required by law.	

			The Department suggest the following alternate language (shown in bold typeface) in the proposed Rule and the accompanying forms: Rule 2.956 (c) (2) If the services of an official court reporter are not available for 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, **provided that the electronic recording is not solely for court internal personnel reasons pursuant to Government Code section 69957(b).** The Department believes this clarification is consistent with the intent of the proposed Rule change without inadvertently limiting the scope of the Rule. With respect to your "Request for Specific Comments", the Department responds: **Question 1: Does the proposal appropriately address the stated purpose?** Response: The proposal addresses the stated purpose but may have inadvertently limited the	The committee discussed this and decided it was unnecessary to make this change, as nothing in the rule suggests that an electronic recording under Government Code section 69957(b) may be used to provide a verbatim record of the proceedings to an appellant granted a fee waiver. The committee appreciates the comment.

			scope. Our recommendation addresses this limitation. **Question 2: Would it be helpful to have a uniform statewide procedure for a party to request a court reporter?** Response: Yes, the proposal as it exists allows for each court to have its own rules related to court reporters which will likely lead to inconsistency in application to the litigants we serve. A uniform statewide procedure would address this inconsistency and require courts to conform to a unified system. In doing so, the litigants served will have a consistency when moving between counties and education to family law facilitators and IV-D program partners will be much easier if the procedure was uniform. adds an ambiguity **Question 3: 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?** Response: No. The Jameson court was concerned that litigants have access to appellate review; the current Rule 3.55 and Rule 8.835 address the cost of preparing a transcript or submitting the electronic recording to the Appellate Court.	The committee will consider this at a future meeting. The committee appreciates the comment.

			Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	
4.	Family Violence Appellate Project (FVAP) by Erin C. Smith, Executive Director and Legal Aid Association of California (LAAC) Salena Copeland, Executive Director	NI	Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants. As FV AP explained in both our amicus brief in Jameson, filed in June 2016, and in our comments and testimony before the Commission on the Future of California's Court System in February 2016, the creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively.	

			Finally, a verbatim record is especially critical on appeal. As the Jameson court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (Jameson, supra, 5 Cal.5th at p. 608.) For these reasons, we applaud the Civil and Small Claims Advisory Committee's proactive approach in drafting proposed changes to Rules of Court, Rules 2.956 and 3.55 and revising associated forms to implement Jameson. At the same time, we believe this Council should go further than the proposed rules as currently drafted to ensure that all low-income litigants in California actually receive the benefit of the Jameson decision, which justice demands. I. Does the proposal appropriately address the stated purpose? To some degree, the proposed Rule changes address the stated purpose. However, we believe that just and effective implementation of Jameson requires providing access to free court reporters with as few barriers as possible. As the Supreme Court stated, quoting from Government Code section 68630, subdivision	

			(b), "[t]he procedure for allowing the poor to use court services without paying ordinary fees must be one that ... is accessible to those with limited knowledge of court processes, and does not delay access to court services." (Jameson, supra, 5 Cal.5th at p. 607 .) Therefore, to fully implement the Jameson decision, we suggest the following changes to strengthen the proposal. 1. Rule 2.956 The easiest way to ensure full implementation of the Jameson decision is to simply provide court reporters for fee-waiver recipients when electronic recording is not provided. No additional barriers should be created for low-income litigants to access their right to a free court reporter. We therefore suggest amending the proposed subsection (c)(2) to read: (2) If the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, the court shall provide an official reporter for attendance at the proceeding. Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no	The committee discussed this but concluded that because courts do not have a means to identify cases in which a party has been granted a fee waiver, the change should not be made. A party may request an official reporter.

			legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems, and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter-and at the right time, and on the right form--only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in Jameson. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of Jameson, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as	

			described in Jameson. (Jameson, supra, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers. 2. Rule 3.55 Rather than changing the language of the advisory committee comment to Rule 3.55, the comment should be removed entirely. As indicated by the fact that the Supreme Court needed five full pages to discuss the meaning and effect of this comment, the comment is confusing. (Jameson, supra, 5 Cal.5th at pp. 614-619.) The proposed changes remain confusing and do nothing to clarify the rule itself, which is clear on its own. We also suggest adding a new subsection (7) "for a digital copy of an electronic recording, if one is made by the court." As explained more fully in response to the Request for Comment III, below, compliance with the spirit of Jameson and the body of law in California regarding access to justice is best met by providing free access to any electronic verbatim record for low-income litigants. 3. Fee Waiver Forms	The committee considered this and similar comments and decided to amend the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case. The committee determined that rule 3.55(11) (to be renumbered (10)) already includes a waiver of fees for a copy of an electronic recording and there is no need to add this item.

			As explained above, the simplest and most effective way to implement Jameson in full is to automatically provide court reporters or a verbatim electronic recording to all litigants with fee waivers. In other words, court reporter costs are included in the "Superior Court" fees or costs that parties request be waived when they complete the current fee waiver request forms (for example, item 4 on FW-001). In line with this suggestion to provide low-barrier access to justice, the phrase "and you request that the court provide an official reporter" should be deleted from the proposed changes to forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, FW-012-GC . If the Council insists on a second affirmative act by litigants before a court reporter is provided, we suggest updating forms FW-001 and FW-001 S, by adding two new sub-check boxes in subsection 4 "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic	The committee declined to make this change but revised the forms consistent with *Jameson v. Desta* (2018) 5 Cal 4th 594. It is unnecessary for a fee waiver recipient to request waiver of these fees. An item is added to the forms for waiver of "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." Rule 3.55(11) provides for a waiver of fees for a copy of an electronic recording.

			recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-OOlGCS, would be added under 6· Requiring anything additional than a second, simple check-box on the fee waiver forms constitutes an unnecessary barrier to the right to a free court reporter. The word "Information" is incorrectly spelled in the footer of page 2 of proposed form FW-001-INFO. II. Would it be helpful to have a uniform statewide procedure for a party to request a court reporter? Yes, a statewide procedure would be the simplest and easiest way to ensure low-income litigants have access to the right to a free court reporter. As described above, we suggest Jameson implementation be achieved by providing a court reporter or verbatim electronic record to all fee waiver recipients and by updating the fee waiver request forms (FW-001, FW-OOlS, FW-001-GC; FW-001GCS) to advise litigants they will receive the free court reporter to which they are entitled. III. 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	 The committee has made this correction. The committee will consider this at a future meeting.

			recording is the official record of the proceeding? Yes. The de minimis cost of copying or emailing an electronic recording should be waived for low-income litigants. For the same reasons a free court reporter is essential for access to justice, access to any electronic recording is also necessary. While court reporters cannot create a transcript for a de minimis fee, and so payment for a transcript cannot be waived, a copy of the electronic recording is a readily available and less expensive alternative. It makes no sense to charge low-income litigants a fee for a copy of an electronic recording. [1] In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the Jameson decision and the long line of access-to-justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders. [1] It also does not make sense to create a separate funding mechanism for electronic verbatim record copies, and the Court Reporter's Board should not be asked to fund or administer a	Following circulation for comment, the committee determined that rule 3.55(11) (to be renumbered (10)) already includes a waiver of fees for the transcript or copy of an electronic recording and there is no need to add this item.

			process for purchasing electronic verbatim recordings, as they do for reporter's transcripts pursuant to Business and Professions Code section 8030.2 et. seq.	
5.	Keri Griffith Sr. Manager, Operations Services Superior Court of Ventura County	AM	The language regarding reporter's fees on FW-008-GC needs to be updated on page 3, number 7(c)(2) to be consistent with other forms. This still reads as follows: "Reporter's fees for attendance at trial or hearing if reporter provided by the court."	This change has been made.
6.	Legal Services of Northern California by Stephen E. Goldberg Regional Counsel Sacramento, CA	NI	I write on behalf of Legal Services of Northern California (LSNC) regarding Invitation to Comment Wl 9-06 about providing court reporters in small claims proceedings. LSNC is a federally funded legal services program that serves very low income clients in 23 northern California counties, and advises clients in several types of civil litigation. In particular, LSNC represents low income tenants in Unlawful Detainer actions. LSNC has had difficulty obtaining court reporters from courts for clients with fee waivers for several years. LSNC is very concerned about the proposed California Rule of Court 2.956(c). In Jameson v. Desta (2018) 5 Cal.5th 594, the California Supreme Court held that courts must make court reporters available to litigants in civil cases with fee waivers when parties who can afford to pay for private court reporters are allowed to bring them. (Jameson, id., 5 Cal. 5111 at pp. 748-9, 758-9, 622; accord Dogan v. Comanche Hills	

			Apartments Inc. (2019) _ Cal.App.5th_, 2019 WL 2755564 at *2 [following Jameson and holding that Jameson applies retroactively to pending appeals].) Proposed California Rules of Court 2.956(c) and 3.55 on face seem to correctly implement Jameson. However, the proposed advisory committee comment impermissibly narrow the scope of cases where courts are required to provide court reporters to litigants with fee waivers in violation of Jameson. Page 4 of Judicial Council Invitation to Comment W19-06 states that the advisory committee recommends adding language that Rule 3.55 is "not intended to 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." (Invitation to Comment W19-06 Waivers of Court Fees for Court Reporters and Interpreters at p. 4.) The Invitation to Comment explains "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." This sentence is followed by footnote 1 which states: "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." (Id. at p.4 fn. 1.) Taken together, the advisory committee comment, the explanation in the Invitation to Comment, and footnote 1 to Invitation to Comment WI 9-06 mean the Judicial Council is taking the position that, for non-criminal cases, court reporters are required only in juvenile and involuntary civil commitment proceedings, and therefore a fee waiver will only require a court to provide court reporters in juvenile and involuntary civil commitment cases. The authority cited for this position is a reporter to the Judicial Council. The footnote and the report it cites are incorrect because Civil Code Section 269(a) requires the court to provide a court reporter on request of a party in any civil case. (Jameson, supra, 5 Cal.5th at p. 610.) The footnote violates the Jameson holding because the Supreme Court said if there is an option for a party to provide their own court reporter and pay for it, then the court must provide a court reporter to indigent litigants who qualify for a fee waiver, and that holding applies to all civil cases, not just juvenile and involuntary commitment cases. Jameson recognizes that access to court reporters is critical to access to justice because the absence of a verbatim record will "frequently be fatal" to an appeal. (Ibid. at pp. 608-09.) The Judicial Council proposed rule limiting the obligation of courts to provide court	

			reporters to litigants with fee waivers to juvenile and involuntary civil commitment proceedings severely limits access to justice for indigent litigants in all other civil cases and is inconsistent with Jameson. This problem can be resolved by 1) either deleting the advisory committee comment or rewriting it to state that Code of Civil Procedure Section 269(a) requires that court reporters be available in all civil cases, and 2) deleting footnote 1 from the Invitation to Comment or rewriting it to state that Code of Civil Procedure Section 269(a) requires that court reporters be available in all civil cases. Invitation to Comment Wl 9-06 requests comment on whether it would be helpful to have a statewide form to request a court reporter. LSNC joins in the comments of the Family Violence Appellate Project and Western Center on Law and Poverty that there should be a standing order that court reporters be provided for all litigants with fee waivers. As a second-best alternative, LSNC supports a statewide court reporter request form because it would ensure a uniform and accessible procedure to request a court reporter. Currently, procedures to request a court reporter can be difficult to access because they are in local rules that are not easily accessible to unrepresented litigants and courts do not have standardized forms. A statewide form would help to ensure that litigants can exercise their right to request a court reporter.	The committee considered the comment and decided to amend the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case. The committee will consider this at a future meeting.

			Invitation to Comment Wl9-06 also requests comment on whether California Rule of Court 3.55 should 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. LSNC supports amending California Rule of Court 3.55 to include court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding. Access to the electronic recording can help parties evaluate whether they should proceed with an appeal. However, in addition, litigants who are provided with a free copy of the electronic recording need to be notified that the recording cannot be submitted to the Court of Appeal in lieu of a transcript unless there is a stipulation of the parties approved by the reviewing court as required by California Rule of Court 2.952(j)(l).[1] Providing an electronic recording for free could easily mislead litigants to believe that they can submit the recording to the reviewing court without limitation and litigants will need to be informed otherwise. [1] LSNC would support amending California Rule of Court 2.952(j)(l) to allow litigants to submit the electronic recording in lieu of a paper transcript in all cases.	Rule 3.55(11) (to be renumbered (10)), which was not part of the proposal that circulated for comment, already includes among the items that must be waived on granting an initial fee waiver "The clerk's fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording." This is outside the scope of the proposal.
7.	Orange County Bar Association by Deirdre Kelly, President Newport Beach, CA	AM	The OCBA answers the Requests for Specific Comments on this proposal as follows: (1) if modified the proposal would appropriately	

			address the stated purposes; (2) it would be helpful to have uniform statewide procedures for a party to request both a court reporter and/or an interpreter in the qualified instances where a party is not required to so provide either; and (3) Rule 3.55 should be amended to include all fees for electronic recordings in all applicable cases where such recording is the official recording. The OCBA has already published at 61 Orange County Lawyer 31 (January 2019) "Feature: 2018 In Review: Notable Civil Cases from the California Supreme Court" by Sungaila and Pulido, and at 60 Orange County Lawyer 26 (October 2018): "Feature: Is Civil Justice Really Free? The California Supreme Court Takes Us One Step Closer" by Judge Kimberly A. Knill, both discussing the effects, questions and limitations of Jameson v Desta (2018) 5 Cal. 5th 594 as cited in this proposal and which may be referenced further. The OCBA recommends the following modifications and changes to the proposal W19-06: (1) The Jameson case was announced July 5, 2018 and has already been determined to be retroactive in Degan vs Comanche Hills Apartments Inc., 2019 Cal. App. Lexis 57 (January 22, 2019 Fourth Appellate District, Division One). This proposal W19-06 should	The committee will consider this at a future meeting.

			not be delayed until January 1, 2020 because such delay will cause numerous cases to be reversed and unnecessary costs to the courts, the litigants, and all other affected persons. Some form of emergency passage is highly recommended. (2) Amend Rule 2.956 "Court Reporting Services in Civil Cases" at subsection (a) to read: "This rule is adopted solely to effectuate the mandates of Government Code Sections 68630-68641; 68086; 69952 et.al, Code of Civil Procedure sections 269, 271, 273, 274 et.al. and Jameson vs Desta (2018) 5 Cal 5th 594." (3) Amend Rule 2.956 at Subsection (c)(2) to read: "In compliance with any conforming legal court rules, request that the court provide an official court reporter for attendance at the proceedings if the party has been granted a fee waiver and if the court is not electronically recording the proceedings; said fee-waived party shall be entitled to an official court reporter pursuant to the fee waiver order." (4) Amend Rule 3.55 "Court fees and costs included in all initial fee waivers" to keep section (5) as modified to read "(5) Court-appointed interpreter fees for parties", and keep section (7) as proposed to delete "if the reporter is provided by the court."	Courts may comply with *Jameson v. Desta* before the effective date of the rule amendments and forms revisions, which are September 1, 2019. The committee declined to make this change, believing it unnecessary.

			(5) Amend the Advisory Committee Comment at the last sentence to read: "Rather, it is intended to include within a fee waiver all fees mandated under the Government Code, Code of Civil Procedure, Evidence Code, and applicable case law for the cost of court reporters services, electronic recordings, and interpreters." (6) Recommend that the Information Sheet on Waiver of Superior Court Fees and Costs (FW-001-INFO) and all following forms be amended to reference and include "Court-appointed interpreter fees for the party and all witnesses" since as proposed the forms only waive interpreter fees for "witnesses" alone and since Forms FW-005, FW-005-GC, FW-012, and FW-012-GC do not even mention fee waivers for interpreter services. (7) Recommend that Form FW-008-GC be amended at Page 3 Subsection C.(2) to read "Reporter's fee for attendance at trial, hearing, or other proceeding" since the fee waiver is applicable whether or not the reporter is "provided by the Court". See Jameson vs Desta, supra.	Based on several other comments, the committee amended the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case. This is outside the scope of the proposal. The committee appreciates the comment. This was an oversight that has been corrected.
8.	Public Counsel by Nisha Vyas, Directing Attorney	NI	Low-income tenants face difficult odds when an unlawful detainer is filed. They have only 5 days to file an answer, or face default. There are not enough legal services resources available to	

			ensure that all who wish to be represented can obtain an attorney. For that reason, more tenants are unrepresented than are represented in unlawful detainers, and the rate of defaults and writs for possession indicate that without a lawyer, the odds are not in their favor. This is not indicative of whether the tenant has meritorious defenses; the issue is their ability to navigate the judicial system. The challenge before us is to actualize access to due process and justice. An important step in actualizing access to justice is access to a court reporter. In Jameson, the California Supreme Court recognized "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." Jameson v. Desta, 5 Cal.5th 594, 608 (2018). Given the critical importance of these rights, we appreciate the Civil and Small Claims Advisory Committee's proposing changes to California Rules of Court, Rules 2.956 and 3.55, and revising associated forms to implement the Jameson decision. At the same time, we urge the Judicial Council to go further to ensure that all low-income litigants actually receive the benefit of the Jameson decision. The new court rules	

			should reflect the principle "that California courts, pursuant to the principles of the in forma pauperis doctrine, have the inherent discretion to facilitate an indigent civil litigant's equal access to the judicial process. . . ." Jameson v. Desta, 5 Cal.5th at 605. Detailed responses to the Judicial Council's questions are set out below, and in substantial part mirror those in the concurrently submitted comments of our colleagues at Western Center on Law and Poverty and several legal services organizations and attorneys. I. Courts should provide a court reporter or other mechanism for verbatim recording of court proceedings to all litigants with fee waivers While the proposed Rule changes address the stated purpose, we suggest the following changes will strengthen the proposal and more fully implement Jameson by providing access to free court reporters with as few barriers as possible. As the high court stated, "[t]he procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services." Id. at 607, citing Gov't Code §68639(b).	

			In order to ensure the most access for indigent persons, we propose that courts provide court reporters, or other mechanism for verbatim recording of proceedings, to all litigants with fee waivers, without requiring a specific request from the litigant. Like the plaintiff in Jameson, many of our clients represent themselves in court and may not understand the importance of requesting a court reporter or preserving the record in their cases. In unlawful detainer cases, tenants have only 5 days from service of summons to file an answer or other responsive pleading, which makes it very difficult to retain counsel. In addition, many tenants cannot afford to pay an attorney, and must seek assistance from legal services agencies, which have capacity to serve only a small fraction of tenants needing representation. As a result, many tenants defend themselves in unlawful detainer proceedings in pro per. Unrepresented tenants are unlikely to recognize the importance of a court reporter in preserving a meaningful right to appeal or pursue other post-judgment remedies. Should an unrepresented tenant seek assistance from a legal services provider after trial and after a judgment was entered in favor of a landlord, the absence of a verbatim record makes it difficult for counsel to assess the merits of the case or assist the client with a potential appeal or post-judgment motion to preserve their housing.	

			Providing court reporters or other methods of preserving a verbatim record of proceedings automatically to all litigants with fee waivers routinely and without is a critical step towards protecting the rights of these vulnerable populations. Detailed suggestions for how to implement this suggestion in the Rules of Court are provided below. 1. Rule 2.956 As explained further below, the easiest way to fully implement Jameson is to provide court reporters to all litigants with fee waivers, as those litigants are more likely to be people with disabilities, people with Limited English Proficiency, or members of other groups who may experience barriers to completing court forms.1 We therefore suggest amending the proposed subsection (c)(2) to read: [2]If the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, the court shall provide an official reporter for attendance at the proceeding. Alternatively, if the Council finds that provision of court reporters to all indigent litigants is not possible, the rule should permit fee waiver applicants to request the waiver of court reporter or electronic record fees in the fee waiver form	The committee discussed this but declined to make the change because courts do not have a means to identify cases in which a party has been granted a fee waiver. The committee considered this and concluded that it is unnecessary for a fee waiver recipient to request waiver of these fees. An item has been added to the forms for waiver of "reporter's fee for attendance at hearing or trial, if the court is not

			itself. No additional barriers should be created for low-income litigants to access their right to a free court reporter. 2. Rule 3.55 Rather than changing the language of the advisory committee comment to Rule 3.55, the Council should remove the comment entirely. As indicated by the fact that the Supreme Court needed five full pages to discuss the meaning and effect of this comment, it is confusing. Jameson, 5 Cal.5th at 614-19. The proposed version of the comment remains confusing and does nothing to clarify the rule itself, which is clear on its own. We also suggest adding a subsection (7) to the rule providing that waiver of initial fees includes "Fees for a digital copy of an electronic recording," which could be inserted under the proposed subsection (6). As explained more fully in response to the Request for Comment III, below, providing indigent litigants with free access to any electronic record complies with the spirit of Jameson and the body of law in California regarding access to justice. 3. Fee Waiver Forms As detailed above, the most effective way to promote access to courts for all litigants would be to provide court reporters or an electronic	electronically recording the proceeding and you request that the court provide an official reporter." The committee considered this comment and similar comments and decided to amend the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case. The committee notes that rule 3.55 already includes a waiver of fee for the transcript or copy of an electronic recording and thus there is no need to amend the rule to add this item.

			verbatim record to all litigants with fee waivers. In the event that the Council does not take this approach, the next best approach is to update the initial fee waiver request so litigants can indicate they are requesting a free court reporter along with a waiver of other fees. We recommend modifying the language of the form such that the default option is for the litigant to obtain a court reporter. Requiring anything additional constitutes an unnecessary barrier to the right to a free court reporter. In line with this suggestion to provide low-barrier access to justice, the phrase "and you request that the court provide an official reporter" can be deleted from the proposed changes to forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, FW-012-GC. [1] See Kelly Jarvis, Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Housing Pilot Projects (July 2017) p. 31. At: https://www.courts.ca.gov/documents/Shriver-Housing-2017.pdf II. Would it be helpful to have a uniform statewide procedure for a party to request a court reporter?	

			As detailed above, litigants who have been granted fee waivers should be provided with a mechanism for a verbatim record of proceedings without additional request. In the event that the Council does not take this approach, a statewide procedure would be the simplest and to way to ensure low-income litigants access to the right to a free court reporter. If local courts implement their own forms, there is greater likelihood of inconsistency and such forms may create additional barriers for indigent litigants. III. 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? Yes. The administrative cost of copying an electronic recording should be waived for ow-income litigants. For the same reasons a free court reporter is essential for access to justice, access to any electronic recording is also necessary. But while the cost of creating a transcript for a court reporter is significant, the cost of providing an electronic recording is minimal, and should be waived for litigants with fee waivers.	The committee will consider this at a future meeting. The committee notes that rule 3.55 already includes a waiver of fees for a copy of an electronic recording and thus there is no need to amend the rule to add this item.

			Creating as few barriers as possible to an electronic verbatim record fulfills the spirit of the Jameson decision and the long line of access to justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and we encourage the Council to move forward with the rule change as expeditiously as possible. Provision of court reporters is essential to ensuring that unlawful detainer defendants seeking to avoid displacement from their homes have a full and fair right to litigate their cases.	
9.	Public Law Center by Ugochi Anaebere-Nicholson Directing Attorney Housing & Homelessness Prevention Unit Santa Ana, CA	NI	The Public Law Center submits this letter in response to the Judicial Council's invitation to comment on proposed rules implementing the Jameson v. Desta, 5 Cal. 5th 594, 608 (2018) ("Jameson") decision. We echo the concerns outlined in comment letters previously submitted by our statewide support center advocates and fellow legal aid colleagues, Western Center on Law and Poverty, Legal Aid Association of California, and the Family Violence Appellate Project, but we write separately to address issues specific to unlawful detainer litigation. Located in Santa Ana, California, the Public Law Center, is a non-profit pro bono law firm that provides access to justice for low-income	

			and vulnerable residents who reside in Orange County. Through our Housing and Homelessness Prevention Unit, we represent low-income families in housing-related matters and advocate for sensible strategies to end homelessness in Orange County. We also collaborate with community organizations, statewide advocates, and law firms to push Orange County jurisdictions to create and maintain effective housing policies for lower-income working families. We also regularly appear on behalf of tenants faced with housing displacement in unlawful detainers that are venued in the Orange County Superior Court system. Based on our long-standing experience with representing tenants in unlawful detainer cases, and handling of cases before the Appellate Division of the Orange County Superior Court and the California Court of Appeal, Fourth Appellate District, Division 3, we can attest to the importance of having an accurate trial transcript for purposes of evaluating the merits of a case for appellate-level review. Additionally, a large percentage of our clientele are persons who are monolingual in a language other than English, such as Spanish and Vietnamese. For these clients where we are not counsel of record, it is impossible to understand what occurred in their unlawful detainer trials	

			without adequate interpretation, and more importantly, a verbatim court transcript. Furthermore, due to limited resources, we have capacity to serve only a small fraction of tenants needing representation. Consequently, many tenants appearing in unlawful detainer court on any given day in the Orange County Superior Court system, are doing so without counsel. Unrepresented tenants are unlikely to recognize the importance of a court reporter in preserving a meaningful right to appeal or pursue other post-judgment remedies. Accordingly, it is vitally important that tenants be afforded their full rights within unlawful detainer proceedings and have the opportunity to have their court fees for court reporters waived, as tenants who lose unlawful detainer cases, and who are unable to have the decisions from their eviction cases judicially reviewed because of an inadequate trial transcript or worse—no transcript at all, often become homeless, or are forced to relocate to remote areas where they are cut off from their communities, jobs, and schools. The Jameson decision contemplated the need to protect the rights of tenants in trial and appellate level proceedings. In Jameson, the California Supreme Court recognized “the realistic, crucial	

			importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (Jameson, supra, 5 Cal. 5th at p. 608.) Given the critical importance of these rights, we appreciate the Civil and Small Claims Advisory Committee's proposing changes to California Rules of Court, Rules 2.956 and 3.55, and revising associated forms to implement the Jameson decision. At the same time, we believe that the Judicial Council should go further to ensure that all low-income litigants actually receive the benefit of the Jameson decision. The new court rules should reflect the principle "that California courts, pursuant to the principles of the in forma pauperis doctrine, have the inherent discretion to facilitate an indigent civil litigant's equal access to the judicial process. . . ." (Jameson, supra, 5 Cal. 5th at p. 605.) Our detailed responses to the Judicial Council's questions are set out below. I. Courts should provide a court reporter, or other mechanism for verbatim recording of court proceedings, to all litigants with fee waivers	

			While the proposed Rule changes address the stated purpose, we suggest the following changes will strengthen the proposal and more fully implement Jameson by providing access to free court reporters with as few barriers as possible. As the high court stated, "[t]he procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services." (Id. at 607, citing Gov't Code §68639(b).) To ensure the most access for indigent persons, we propose that courts provide court reporters, or other mechanism for verbatim recording of proceedings, to all litigants with fee waivers, without requiring a specific request from the litigant. Like the plaintiff in Jameson, many of our clients represent themselves in court and may not understand the importance of a court reporter to fully litigating their case. In unlawful detainer cases, tenants have only 5 days from service of summons to file an answer or other responsive pleading, which makes it very difficult to retain counsel. The tenants who seek our services are financially unable to hire an attorney to represent them in any case, much less an unlawful detainer case. As a result, many	See committee response below.

			tenants defend themselves in unlawful detainer proceedings in pro per, and are unable to understand the importance of a court reporter in preserving a meaningful right to appeal or pursue other post-judgment remedies. We often receive requests for services from clients who have already gone to trial without counsel and who only retain an attorney after judgment has been entered against them. The absence of a verbatim record makes it difficult for us to assess the merits of the case or assist the client with a potential appeal or post-judgment motion to preserve their housing. Providing court reporters or other methods of preserving a verbatim record of proceedings to all litigants with fee waivers is a critical step towards protecting the rights of these vulnerable populations. Detailed suggestions for how to implement this suggestion in the Rules of Court are provided below. 1. Rule 2.956 As explained further below, the easiest way to fully implement Jameson is to provide court reporters to all litigants with fee waivers, as those litigants are more likely to be people with disabilities, people with Limited English Proficiency, or members of other groups who may experience barriers to completing court	

			forms.1 We therefore suggest amending the proposed subsection (c)(2) to read: [2]If the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, the court shall provide an official reporter for attendance at the proceeding. Alternatively, if the Council finds that provision of court reporters to all indigent litigants is not possible, the rule should permit fee waiver applicants to request the waiver of court reporter or electronic record fees in the fee waiver form itself. No additional barriers should be created for low-income litigants to access their right to a free court reporter. 2. Rule 3.55 Rather than changing the language of the advisory committee comment to Rule 3.55, the Council should remove the comment entirely. As indicated by the fact that the Supreme Court needed five full pages to discuss the meaning and effect of this comment, it is confusing. (Jameson, 5 Cal. 5th at pp. 614-19.) The proposed version of the comment remains confusing and does nothing to clarify the rule itself, which is clear on its own.	The committee considered this but declined to make a change because courts do not have a means to identify cases in which a party has been granted a fee waiver. It is unnecessary for a fee waiver recipient to request waiver of these fees. An item is added to the forms, which are court orders, for waiver of "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." The committee considered this and similar comments and decided to amend the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case.

			We also suggest adding a subsection (7) to the rule providing that waiver of initial fees includes "Fees for a digital copy of an electronic recording," which could be inserted under the proposed subsection (6). As explained more fully in response to the Request for Comment III, below, providing indigent litigants with free access to any electronic record complies with the spirit of Jameson and the body of law in California regarding access to justice. [1] See Kelly Jarvis, Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Housing Pilot Projects (July 2017) p. 31. At: https://www.courts.ca.gov/documents/Shriver-Housing-2017.pdf 3. Fee Waiver Forms As detailed above, the most effective way to promote access to courts for all litigants would be to provide court reporters or an electronic verbatim record to all litigants with fee waivers. In the event that the Council does not take this approach, the next best approach is to update the initial fee waiver request so litigants can indicate they are requesting a free court reporter along with a waiver of other fees. We recommend modifying the language of the form such that the default option is for the litigant to obtain a court	The committee determined that rule 3.55 already includes a waiver of fees for a copy of an electronic recording and, therefore, there is no need to add this item.

			reporter. Requiring anything additional constitutes an unnecessary barrier to the right to a free court reporter. In line with this suggestion to provide low-barrier access to justice, the phrase "and you request that the court provide an official reporter" can be deleted from the proposed changes to forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, FW-012-GC. II. Would it be helpful to have a uniform statewide procedure for a party to request a court reporter? As detailed above, litigants with fee waivers should be provided with a mechanism for a verbatim record of proceedings without additional request. In the event that the Council does not take this approach, a statewide procedure would be the simplest and easiest way to ensure low-income litigants access to the right to a free court reporter. If local courts implement their own forms, there is greater likelihood of inconsistency and such forms may create additional barriers for indigent litigants. III. 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	The committee will consider this at a future meeting.

			recordings in cases in which an electronic recording is the official record of the proceeding? Yes. The administrative cost of copying an electronic recording should be waived for low-income litigants. For the same reasons a free court reporter is essential for access to justice, access to any electronic recording is also necessary. But while the cost of creating a transcript for a court reporter is significant, the cost of providing an electronic recording is minimal, and should be waived for litigants with fee waivers. Creating as few barriers as possible to an electronic verbatim record fulfills the spirit of the Jameson decision and the long line of access to justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and we encourage the Council to move forward with the rule change as expeditiously as possible. Provision of court reporters is essential to ensuring that unlawful detainer defendants seeking to avoid displacement from their homes have a full and fair right to litigate their cases.	Rule 3.55 already includes a waiver of fees for a copy of an electronic recording.

10.	San Diego County BAR Association by Heather U. Guerena Chair, Appellate Practice Section	AM	We support the proposed amendments to Rules 2.956 and 3.55 and Forms FW-001- INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, and FW-0012-GC. These changes will provide better access to justice for those litigants with fee waivers. Having a court reporter in the trial court ensures that the litigants and appellate courts have an accurate record to adjudicate appeals. Having a record also saves litigants the difficult process of having to obtain a settled statement from the trial court. Through our experience with the self-help workshops, we have learned that without clear language, the unrepresented litigants will assume more is included in the fee waiver than is intended. The current language references that the participation of the court reporter at the proceeding is included in the waiver. The forms are silent as to whether this includes the cost of preparing the actual transcript following the court proceeding. The APS suggests the Committee consider adding a sentence in the explanation pages to clarify that the fee waiver only applies to the cost to have a court reporter attend the trial court proceedings and take shorthand notes. We respectfully suggest a	The committee appreciates the comments.

			sentence be added that states the fee waiver does not include the cost to transcribe those shorthand notes into the official reporter's transcript that may be part of the record on appeal. In the experience of our committee members, litigants with fee waivers are often proceeding pro se and therefore lack legal training. These litigants may not even know what a court reporter is or does. The litigants would benefit from a plain English clarification about the scope of the fee waiver. In conclusion, the APS commends the Civil and Small Claims Advisory Committee's work on these rules and forms. Thank you for the opportunity to comment.	
11.	Lecia Shorter Beverly Hills, CA	A	There should also be a rule that courts cannot assess court reporter fees to party that has a fee waiver when they have not made court reporters available pursuant to the new Supreme Court decision. There should also be mention about retroactive application when a party has been assessed court reporter fees.	The rule amendment proposed by the commenter is outside the scope of the proposal and unnecessary as there would be no fee to be assessed or waived if no court reporter were provided.
12.	Superior Court of Butte County by Richard Holst Deputy Court Executive Officer	AM	The proposed striking of the language "if the reporter is provided by the Court" from Rule 3.55(7) adds an ambiguity the could be	The committee discussed this and determined that no change should be made to further describe the

			interpreted to mean that the Court is responsible for compensating / paying for reporters that are NOT provided by the Court. The current language makes it clear that the Court is only responsible for / can only waive fees for Court-provided reporters as opposed to privately-provided reporters. If the intent of the proposal is to remove any inference that the Court has discretion to provide or not provide a reporter, that clarification can be made in the Advisory Comment (and/or the Rule(s) that directly address the provision of reporters) without striking the language and creating the ambiguity.	reporters' fees as the law permits only waiver of the fees that are actually paid by the court.
13.	Superior Court of Los Angeles County Los Angeles, CA	AM	Form FW-008 Order on Court Fee Waiver After Hearing: Section 5(a)(1): Suggest changing the last bullet to read: Making a transcript or copy of an official electronic ~~recorder~~ recording under rule 8.835 Section 5(c)(2): Suggest changing the second to last check box to read: Reporter's fee for attendance at trial or hearing ~~if reporter provided by~~ the court is not electronically recording the proceeding and you request that the court provide an official reporter	The committee appreciates the comment and has made these corrections to the forms.

			• **Does the proposal appropriately address the stated purpose?** Yes. • **Would it be helpful to have a uniform statewide procedure for a party to request a court reporter?** No. • **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?** Yes, but for Appellants only. Any consideration of fee waivers for copies of electronic recordings should include a clear distinction regarding a copy of the "audio recording" versus a "written transcript" of the audio recording. Written transcripts would be absolutely cost prohibitive. **Would the proposal provide cost savings? If so, please quantify.** No. **What would the implementation requirements be for courts—for example, training staff** **(please identify position and expected hours of training), revising processes and procedures (please describe), changing**	The committee appreciates the comments. The committee notes that rule 3.55 already includes a waiver of fees for the transcript or copy of an electronic recording and thus there is no need to amend the rule to add this item.

			docket codes in case management systems, or modifying case management systems? Implementation would require 16 hours to draft the request form, process, and procedure. In addition, 30 minutes to one hour of training would be needed for public counter staff, courtroom clerks, and the court reporter services unit on process and procedure. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes	
14.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	**Q: Does the proposal appropriately address the stated purpose?** Yes **Q: Would it be helpful to have a uniform statewide procedure for a party to request a court reporter?** No. Courts do not have to ability to provide court reporters in the same manner throughout the state; therefore, flexibility must be allowed so that each court can determine the best way for litigants to request a court reporter be provided. **Q: 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**	The committee appreciates the comments on specific questions. The committee will consider this at a future meeting.

			recordings in cases in which an electronic recording is the official record of the proceeding? Yes. **General Comments:** On the Guardianship/Conservatorship specific forms (FW-003-GC; FW-005-GC; FW-008-GC; FW-012-GC), our court suggests striking some of the proposed language: "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." Probate falls under the General Civil jurisdiction and cannot be recorded, so the stricken language would only cause confusion. On the FW-008, item #5.c.(2), the proposed language, "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" should be added to the appropriate checkbox. On the FW008-GC, item #7.c.(2), the proposed language, "Reporter's fee for attendance at hearing or trial and you request that the court provide an official reporter" should be added to the appropriate checkbox.	Following circulation for comment, the committee determined that rule 3.55(11) (to be renumbered (10) already includes a waiver of fees for the transcript or copy of an electronic recording and there is no need to add this item. The committee appreciates this comment and has made the corrections.

15.	Superior Court of Ventura County by Nan L. Richardson, Manager and Jessica Brown, Supervisor	NI	**1. Does the proposal appropriately address the stated purpose?** a. Yes, with the following exceptions: The committee is proposing to eliminate the language in CRC 3.55 (7) to state "Reporter's fees for attendance at hearings and trials, ~~if the reporter is provided by the court~~." The purpose of eliminating this language is to relieve courts from an implied mandate to provide an official reporter. However, when reading the CRC without the language, confusion arises as to what "reporter's fee" the court will be paying for. The new language may be construed to require the courts to pay any fee charged by an outside pro tem reporter or agency providing a pro tem reporter. The proposed language may cause confusion for the litigants and may increase costs significantly for courts using pro tem reporters. Each county has established their own reimbursement fee. Suggested alternate language, "Reporter's fees established (or set) by the court for attendance at hearings and trials."	The committee discussed this and determined that no change should be made to further describe the reporters' fees as the law permits only waiver of the fees that are actually paid by the court.

			2. Would it be helpful to have a uniform statewide procedure for a party to request a court reporter? a. No. The process may need to be specific to each county and the availability of court reporters in that county. At Ventura Superior Court we provide an official reporter when requested. A Local form for a party with a fee waiver to request a court reporter is available and in use at Ventura Superior Court. **3. 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?** a. Yes. Including the language suggested would clarify requests for copies of electronic recordings for a party with a fee waiver **<u>Additional comments:</u>** **1. Would the proposal provide cost savings?** a. If the actual fee paid by the court is clarified, the proposal could provide significant cost savings. Currently outside agencies are charging a	The committee will consider this at a future meeting. Following circulation for comment, the committee determined that rule 3.55 already includes a waiver of fee for the transcript or copy of an electronic recording and there is no need to add this item. The committee appreciates the additional comments.

			higher per diem than the established court fees for a court reporter. **2. What would the implementation requirements be for the courts – for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems or modifying case management systems?** a. At Ventura Superior Court no additional training for the Court Reporting department. Family Law, Civil and Probate clerks will need training on the new forms requesting a court reporter or interpreter. Judicial assistants will need training on identifying fee waiver hearings and responding to requests for court reporters and interpreters. Tracking the number of requests would be helpful for future analysis. **3. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** a. At Ventura Superior Court, three months would be adequate. Local forms have been created, and the	

			court has already implemented the new procedure. **4. How well would this proposal work in courts of different sizes?** a. The proposal will clarify the new requirements to court staff and litigants when providing reporters on request by parties with a fee waiver. Restricting the reporter fee to a fee established by the court would eliminate a cost overrun by paying market rates for independent court reporter coverage, which may harm courts in areas with a reporter shortage.	
16.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	Recommended JRS Position: Agree with proposed changes. The proposal is required to conform to a change of law. The JRS notes the following: 1. It would not be helpful to have a statewide procedure for a party to request a court reporter. It is sufficient that the forms will be available to every court.	The committee will consider this at a future meeting.

			2. Rule 3.55 should be amended to include court fees for electronic copies of electronic recordings for appellants. This is an important addition to allowing courts who cannot provide court reporters because of budgeting, to use recording instead. It might expand the use of recording greatly. It would therefore be unfair not to allow a person with a fee waiver to get a copy of the recording and be advised that he/she has a right to such a recording. The JRS also notes the following impact to court operations: • Trial court labor or employment related issues and/or concerns. Courts will have to find a way to provide reporters in such civil cases and this will compete with the requirement to provide reporters in other cases. The reporters will have to work more cases or the court will need to potentially hire more reporters. • Increases court staff workload.	Following circulation for comment, the committee determined that rule 3.55(11) already includes a waiver of fees for the transcript or copy of an electronic recording and there is no need to add this item. The committee appreciates the comments.
17.	Unite the People by Amitabho Chattopadhyay Case Management Director	A	We agree with the proposed changes and believe that they adequately address their intended purpose.	

	Los Angeles, CA		We believe that a standardized process for requesting a court reporter, involving the use of a simple Judicial Council form or (preferably) some kind of e-mail or telephone based process would be advisable. The current patchwork of methods may be prone to confuse indigent litigants, who often rely on word-of-mouth and Internet sources and may as a result misunderstand local procedures, may fall victim to overly complex, unpublished or oppressive local rules or incorrectly apply methods from one county to proceedings in another, in the process possibly prejudicing their right to a court reporter. We agree that rule 3.55 should be amended to include court fees for copies of electronic recordings.	The committee will consider this at a future meeting. Following circulation for comment, the committee determined that rule 3.55(11) already includes a waiver of fees for the transcript or copy of an electronic recording and there is no need to add this item.
18.	Western Center on Law & Poverty by Madeline Howard, Sr. Attorney Los Angeles, CA And the following housing advocacy groups: • Fair Housing Napa Valley • Family Violence Law Center • National Housing Law Project • Centro Legal de la Raza	NI	Western Center on Law & Poverty and the undersigned housing advocacy groups submit this letter in response to the Judicial Council's invitation to comment on proposed rules implementing the Jameson v. Desta decision. We echo the concerns outlined in comment letters submitted by our colleagues at the Family Violence Appellate Project and the Legal Aid Association of California, but write separately to address issues specific to housing litigation.	

	• Legal Aid Foundation of Los Angeles • Eviction Defense Collaborative • Law Foundation of Silicon Valley • Legal Aid of Marin • AIDS Legal Referral Panel • Disability Rights Education and Defense Fund • Public Law Center • Public Interest Law Project • HEART Los Angeles • BASTA, Inc. • Bay Area Legal Aid		Western Center represents low-income Californians in securing housing, health care, racial justice, public benefits and access to justice. Our housing advocacy incorporates promotion of affordable and equitable housing development, protection of tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency, low-income people and other groups. Because Western Center is a statewide support center for legal services programs, attorneys representing tenants in unlawful detainers contact us for assistance when their clients experience barriers to court access or other harms. Western Center is therefore uniquely positioned to assess the impact of the Judicial Council's proposed changes to the court rules, particularly as they will apply in unlawful detainer litigation. The undersigned legal services attorneys also advocate for low-income tenants across California, and appear on behalf of these tenants in unlawful detainers on a regular basis. In the current affordable housing crisis, when our clients are displaced from their homes, they often become homeless or are forced to relocate to remote areas where they are cut off from their communities, jobs and schools. At the same time, in rent-controlled jurisdictions, property owners have ever greater incentive to initiate baseless unlawful detainers to displace tenants	

			from their affordable units. It is more important than ever that tenants be afforded their full rights within unlawful detainer proceedings. In Jameson, the California Supreme Court recognized "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." Jameson v. Desta, 5 Cal.5th 594, 608 (2018). Given the critical importance of these rights, we appreciate the Civil and Small Claims Advisory Committee's proposing changes to California Rules of Court, Rules 2.956 and 3.55, and revising associated forms to implement the Jameson decision. At the same time, we believe that the Judicial Council should go further to ensure that all low-income litigants actually receive the benefit of the Jameson decision. The new court rules should reflect the principle "that California courts, pursuant to the principles of the in forma pauperis doctrine, have the inherent discretion to facilitate an indigent civil litigant's equal access to the judicial process. . . ." Jameson v. Desta, 5 Cal.5th at 605. Our detailed responses to the Judicial Council's questions are set out below. I. Courts should provide a court reporter, or other mechanism for verbatim recording of court proceedings, to all litigants with fee waivers	

			While the proposed Rule changes address the stated purpose, we suggest the following changes will strengthen the proposal and more fully implement Jameson by providing access to free court reporters with as few barriers as possible. As the high court stated, "[t]he procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services." Id. at 607, citing Gov't Code §68639(b). In order to ensure the most access for indigent persons, we propose that courts provide court reporters, or other mechanism for verbatim recording of proceedings, to all litigants with fee waivers, without requiring a specific request from the litigant. Like the plaintiff in Jameson, many of our clients represent themselves in court and may not understand the importance of a court reporter to fully litigating their case. In unlawful detainer cases, tenants have only 5 days from service of summons to file an answer or other responsive pleading, which makes it very difficult to retain counsel. In addition, many tenants cannot afford to pay an attorney, and must seek assistance from legal services agencies, which have capacity to serve only a small fraction of tenants needing representation. As a result, many tenants defend themselves in unlawful detainer proceedings in pro per. Unrepresented tenants are unlikely to recognize	

			the importance of a court reporter in preserving a meaningful right to appeal or pursue other post-judgment remedies. The undersigned legal services agencies routinely work with clients who have already gone to trial without counsel and only retain an attorney after judgment has been entered against them. The absence of a verbatim record makes it difficult for counsel to assess the merits of the case or assist the client with a potential appeal or post-judgment motion to preserve their housing. Providing court reporters or other methods of preserving a verbatim record of proceedings to all litigants with fee waivers is a critical step towards protecting the rights of these vulnerable populations. Detailed suggestions for how to implement this suggestion in the Rules of Court are provided below. 1. Rule 2.956 As explained further below, the easiest way to fully implement Jameson is to provide court reporters to all litigants with fee waivers, as those litigants are more likely to be people with disabilities, people with Limited English Proficiency, or members of other groups who may experience barriers to completing court forms.1 We therefore suggest amending the proposed subsection (c)(2) to read: [2]If the party has been granted a fee waiver and if the court is not electronically recording the	The committee discussed this but concluded that because courts do not have a means to identify

			hearing or trial, the court shall provide an official reporter for attendance at the proceeding. Alternatively, if the Council finds that provision of court reporters to all indigent litigants is not possible, the rule should permit fee waiver applicants to request the waiver of court reporter or electronic record fees in the fee waiver form itself. No additional barriers should be created for low-income litigants to access their right to a free court reporter. 2. Rule 3.55 Rather than changing the language of the advisory committee comment to Rule 3.55, the Council should remove the comment entirely. As indicated by the fact that the Supreme Court needed five full pages to discuss the meaning and effect of this comment, it is confusing. Jameson, 5 Cal.5th at 614-19. The proposed version of the comment remains confusing and does nothing to clarify the rule itself, which is clear on its own. We also suggest adding a subsection (7) to the rule providing that waiver of initial fees includes "Fees for a digital copy of an electronic recording," which could be inserted under the proposed subsection (6). As explained more fully in response to the Request for Comment III, below, providing indigent litigants with free access to any electronic record complies with	cases in which a party has been granted a fee waiver, the change should not be made. It is unnecessary for a fee waiver recipient to request waiver of these fees. An item has been added to the forms for waiver of "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." The committee considered this and similar comments and decided to amend the advisory committee comment to include criteria in *Jameson v. Desta* (2018) 5 Cal 4th 594 and to cite that case. Rule 3.55(11) already includes a waiver of fees for a copy of an electronic recording and there is no need to add this item.

			the spirit of Jameson and the body of law in California regarding access to justice. 3. Fee Waiver Forms As detailed above, the most effective way to promote access to courts for all litigants would be to provide court reporters or an electronic verbatim record to all litigants with fee waivers. In the event that the Council does not take this approach, the next best approach is to update the initial fee waiver request so litigants can indicate they are requesting a free court reporter along with a waiver of other fees. We recommend modifying the language of the form such that the default option is for the litigant to obtain a court reporter. Requiring anything additional constitutes an unnecessary barrier to the right to a free court reporter. In line with this suggestion to provide low-barrier access to justice, the phrase "and you request that the court provide an official reporter" can be deleted from the proposed changes to forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, FW-012-GC. [1] See Kelly Jarvis, Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Housing Pilot Projects (July 2017) p. 31. At: https://www.courts.ca.gov/documents/Shriver-Housing-2017.pdf	The committee declined to make this change. The proposed revisions to forms are consistent with *Jameson v. Desta* (2018) 5 Cal 4th 594. The committee discussed this but notes that courts do not have a means to identify cases in which a party has been granted a fee waiver.

			II. Would it be helpful to have a uniform statewide procedure for a party to request a court reporter? As detailed above, litigants with fee waivers should be provided with a mechanism for a verbatim record of proceedings without additional request. In the event that the Council does not take this approach, a statewide procedure would be the simplest and easiest way to ensure low-income litigants access to the right to a free court reporter. If local courts implement their own forms, there is greater likelihood of inconsistency and such forms may create additional barriers for indigent litigants. III. 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? Yes. The administrative cost of copying an electronic recording should be waived for low-income litigants. For the same reasons a free court reporter is essential for access to justice, access to any electronic recording is also necessary. But while the cost of creating a transcript for a court reporter is significant, the cost of providing an electronic recording is minimal, and should be waived for litigants with fee waivers.	The committee will consider this at a future meeting. Rule 3.55(11) (11) already includes a waiver of fees for a copy of an electronic recording and there is no need to add this item.

			Creating as few barriers as possible to an electronic verbatim record fulfills the spirit of the Jameson decision and the long line of access to justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and we encourage the Council to move forward with the rule change as expeditiously as possible. Provision of court reporters is essential to ensuring that unlawful detainer defendants seeking to avoid displacement from their homes have a full and fair right to litigate their cases.	
19.	Theresa Williams Pasadena, CA	A	The Los Angeles County Superior Court advertises to the public that it is a court of record but fails to record all proceedings and restricts access to the court when the cost to hire a court reporter is unaffordable to most litigants. The court doctrines are oppressive to pro se litigants as litigants are forced to engage in pre-trial matters that could go on for years, and without it being officially recorded. It is necessary in an appeal to be able to have adequate record keeping of the trials as proceedings in the lower courts are void of common law remedies and the tribunal is not independent from the magistrate (the public employee) who is often bias. If someones liberty and real estate, land and building, immovable property is at risk, the courts should provide a court reporter, especially for the indigent.	The comment is outside the scope of the proposal; no response is required.

Item number: 15

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

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
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 16–17, 2019

Title
Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

Rules, Forms, Standards, or Statutes Affected
Adopt form CIV-165

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
March 25, 2019

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

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 recommends that new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) be used for that purpose.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019, adopt *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to provide a form for issuing an order required under Senate Bill 1196.

The new form is attached at page 5.

Relevant Previous Council Action

The Judicial Council has taken no previous action relevant to this proposal.

Analysis/Rationale

Under SB 1196, 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 the council must adopt a form that may be filed with the Secretary of State.

SB 1196 added in part, 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 unlawfully[1] 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 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 (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 added 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. On 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. (Civ. Code, § 1798.202(c).)

This advisory committee 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 includes 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 on 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 new form requires the petitioner to file a certified copy of the order with the Secretary of State. (See Civ. Code, § 1798.202(f).)

[1] Unlawful use 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."

Policy implications

The advisory committee did not discuss policy concerning this proposal, except as described in the alternatives considered, below. The form is required by legislation and will be used by courts to comply with new Civil Code section 1798.202.

Comments

This proposal circulated for public comment from December 11, 2018, to February 12, 2019. Three comments were received, all agreeing with the proposal. The Superior Courts of Los Angeles and San Diego Counties, in response to a specific question in the invitation to comment, further commented that the findings listed in item 2 of form CIV-165, which stated what the court relied on in finding no reasonable cause to believe that the petitioner's personal identifying information had been used lawfully, should follow the language of the statute. The committee agreed and recommends the council adopt the form as circulated.

Alternatives considered

Before the proposal circulated for comment, 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, three alternatives were considered: (1) to set out the types of information the court relied on in making the finding by tracking the language of the statute, which provides that the petition is to be determined based on declarations, affidavits, police reports, or other material, relevant, and reliable information; (2) to state only that the court relied on relevant and reliable information in making its finding; or (3) to state only that the court made the finding.

Some members were concerned that if one of the types of reliable information—as listed in the statute—includes police reports, petitioners may attach them or include them when their petitions are filed. Doing so 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 to seek comments on this specific question. As noted above, the two commenters who addressed the question agreed that the form language should follow the statutory language.

Fiscal and Operational Impacts

The fiscal and operational impacts of adopting a form order that must be filed by the petitioner with the Secretary of State are limited. The authority and procedures for setting and holding a hearing on the petition are required by statute and not created by this proposal. The Superior Court of San Diego County identified two implementation requirements: training staff (business office and courtroom clerks) and updating case management system internal procedures. The court determined that three months from council approval of the proposal to its effective date was sufficient time for implementation. The Superior Court of Los Angeles County identified four implementation requirements: revising current procedures; training its clerical, supervisory, and management staff; modifying its case management system; and updating its website. The court stated that at least six months would be needed for implementation. Because the legislation

this proposal implements was effective January 1, 2019, the committee does not recommend delaying the effective date of form CIV-165 beyond September 1, 2019.

Attachments and Links

1. Form CIV-165, at page 5
2. Chart of comments, at page 6
3. 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 (*name*):	*FOR COURT USE ONLY* **DRAFT** **03-11-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF *(name):*	
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

Form Adopted for Mandatory Use
Judicial Council of California
CIV-165 [New September 1, 2019]

Civil Code, §§ 1798.200, 1798.201, 1798.202
www.courts.ca.gov

W19-05

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (form CIV-165)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Deirdre Kelly President	A	None	No response necessary.
2.	Superior Court of Los Angeles County	A	**Does the proposal appropriately address the stated purpose?** Yes. **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?** Yes. **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 would require revising current policy/procedure, training of clerical, supervisory and management staff, modifying case management system and updating website. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?**	The committee appreciates the comments. The language in item 2 tracks the statutory language, consistent with this comment. It is unchanged from the version that circulated for comment.

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

W19-05

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (form CIV-165)

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

	Commentator	Position	Comment	Committee Response
			No; would need at least 6 months to implement	
3.	Superior Court of San Diego County By Mike Roddy Executive Officer	A	**Q: Does the proposal appropriately address the stated purpose?** Yes. **Q: Should the 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?** Yes, the findings listed in item 2 should mirror those listed in the statute. **Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Training staff (business office and courtroom clerks) and updating case management system and internal procedures **Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes.	The committee appreciates the comments. The language in item 2 tracks the statutory language, consistent with this comment. It is unchanged from the version that circulated for comment.

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

W19-05

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (form CIV-165)

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

Item number:16

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

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
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 17, 2019:

Title
Civil Practice and Procedure: Unlawful Detainer

Rules, Forms, Standards, or Statutes Affected
Revise forms SUM-130 and UD-105

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
March 25, 2019

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Two recent bills 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 excludes Saturdays, Sundays, and other judicial holidays. The Civil and Small Claims Advisory Committee recommends 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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019, revise:

1. *Answer—Unlawful Detainer* (form UD-105) to add a means for a tenant or household member to document acts that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult and to add an affirmative defense, both of which are required by recent legislation; and

2. *Summons—Unlawful Detainer—Eviction* (form SUM-130) to change the description of the time period for responding to an unlawful detainer summons, consistent with recent legislation.

The revised forms are attached at pages 7–10.

Relevant Previous Council Action

The Judicial Council initially approved form UD-105 in 1981 and has subsequently approved various revisions to it. Effective January 1, 2012, the council revised form UD-105 to satisfy a legislative mandate in Code of Civil Procedure section 1161.3 by incorporating a new affirmative defense alleging that plaintiff seeks to evict defendant based on acts that constitute domestic violence, sexual assault, or stalking against a defendant or a member of a defendant's household. Effective January 2, 2014, in response to a further legislative mandate enacted in 2012, the council revised the same item on form UD-105 to add acts of elder abuse to the list of grounds that could serve as a basis for the new affirmative defense. Prior revisions to form SUM-130 are not relevant to this proposal.

Analysis/Rationale

Answer–Unlawful Detainer (form UD-105)

Code of Civil Procedure section 1161.3 provides that a landlord cannot terminate a tenancy or fail to renew a tenancy based on acts that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult against a tenant or a tenant's household member. The acts must be documented by a temporary restraining order, protective order, or copy of a peace officer's written report 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 "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 revises *Answer—Unlawful Detainer* (form UD-105) to satisfy that mandate.

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. (Code Civ. Proc., § 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 adds that affirmative defense to form UD-150, allowing a

tenant or resident to assert that an eviction was the result of the tenant's or resident's summoning assistance on behalf of an abuse or crime victim or person in an emergency.

The affected form, form UD-105, is an optional Judicial Council form. Item 3 includes several affirmative defenses that can be checked by the defendant in an unlawful detainer case. To comply with AB 2413, the Civil and Small Claims Advisory Committee recommends that the form be revised to:

- Add the following underlined text to item 3i:

  Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts).

- Add new item 3j, to read as follows:

  ☐ Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by 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 item 3j, the items that follow in item 3 are 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 is revised to state, "You have 5 DAYS, not counting 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 has been removed from the form.

Though not required by legislation, other changes have been made to make the form easier to read and comprehend: It is split into two columns, separating the English and Spanish text; and information about fee waivers, currently in two places, has been put together under the heading "FEE WAIVER." The following language has been added and appears 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. On the current form, these appear at the bottom of first page, 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 have been corrected.

Note: Except for removing the parenthetical statement about calculating days, the Spanish language part of form SUM-130 has not yet be revised.

Policy implications

Though the legislation requiring these revisions may have policy implications—it expands a tenant's or household member's affirmative defenses to an unlawful detainer action and provides another means to document actions against the tenant or household member by another, actions that could provide a defense to an unlawful detainer action—the form revisions recommended by the advisory committee do not have independent policy implications.

Comments

This proposal circulated for comment from December 11, 2018, to February 12, 2019. Eleven comments were received. Commenters included legal services organizations, superior courts, a superior court family law facilitator, a local bar association, and individuals who did not provide an organizational affiliation. Three commenters agreed with the proposal, two agreed with the proposal if modified, and the remainder did not indicate a position but suggested changes. One commenter did not agree, but provided only comments that are outside the scope of the proposal. A comment chart is attached at pages 11–30.

Answer–Unlawful Detainer *(form UD-105)*

The legal services organizations—the Family Violence Appellate Project, National Housing Law Project, and Western Center on Law and Poverty—suggested revisions to the wording of item 3i to provide examples of "a qualified third party" whose documentation will show that the tenant or household member sought assistance for injuries or abuse resulting from specified acts. They suggested adding "for example: a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist." All these examples fit within the definition of "qualified third party" in Code of Civil Procedure section 1161.3(e) and provide the most relevant and common examples. The advisory committee recommends this change, and it has been made to the form. In addition, the same commenters suggested using boldface text for the options for documenting the acts of violence or abuse. This change has been made: the words "a temporary restraining order, protective order, or police report" and "a signed statement from a qualified third party" have been bolded. The legal services organizations that commented also noted that tenants are protected from having a tenancy terminated for a single act of violence or abuse against the tenant or household member and suggested that item 3i on the form be revised to make this clear by changing "acts" to "act." This change has been made.

The legal services organizations suggested that proposed item 3j, an affirmative defense, be revised to replace "summoning law enforcement" with "calls for police" and to add "for example, ambulances" in parentheses after the words "emergency assistance." The committee agreed, and item 3j has been revised accordingly.

Summons—Unlawful Detainer—Eviction *(form SUM-130)*
In response to a question in the invitation to comment, one commenter suggested that the proof of service information, notice to the person served, and space for the court seal and clerk's signature should remain on the first page of the form for ease of use or that the form should be reduced to a single page by removing the questions about use of an unlawful detainer assistant and creating a new form for that purpose. Two superior courts that commented stated that the seal should be moved to the second page, as proposed, and doing so would have no significant impact. The committee has kept the proof of service information, notice to the person served, and space for the court seal and clerk's signature on the second page. One of the courts asked that the case number be moved directly underneath the file stamp box. The committee discussed this request but thought that it would be better to keep the case number where it is on the existing form, opposite item 1, and to have the notice to the person sued at the top, where it is most prominent.

Several commenters questioned the language stating the required response time on form SUM-130—"You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays"—believing it to be unclear. This is the language used in the statute. One commenter suggested changing it to "Not including Saturdays, Sundays, and court holidays." Another suggested the words "Not counting Saturdays and Sundays and other court holidays." The advisory committee considered the suggestions and changed the language to "not counting Saturdays and Sundays and other judicial holidays," believing it made clear that these days should not be counted when determining the five day deadline.

Several commenters provided Spanish translations of the revisions. Invitations to comment do not include translated versions of forms. All translations occur after the English text of a forms proposal is approved by the Judicial Council, to ensure that the translation is of the approved text and to conserve translation costs.

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 alternatives other than the specific wording of the affirmative defenses and the formatting and organization of some of the items on SUM-130. 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.

Attachments and Links

1. Forms SUM-130 and UD-105, at pages 7–10
2. Chart of comments, at pages 11–30
3. Link A: Assembly Bill 2413, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413*
4. 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)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

03/18/19

Not approved by the Judicial Council

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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, not counting 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.

[Revisions to Spanish version have not yet been made.]
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):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-130 [Rev. September 1, 2019]

Code of Civil Procedure, §§ 412.20, 415.456, 1167
www.courts.ca.gov

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: *(Fecha)* Clerk, by *(Secretario)* , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión 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: ☐ CCP 416.10 (corporation). ☐ CCP 416.60 (minor).
      ☐ CCP 416.20 (defunct corporation). ☐ CCP 416.70 (conservatee).
      ☐ CCP 416.40 (association or partnership). ☐ CCP 416.90 (authorized person).
      ☐ CCP 415.46 (occupant). ☐ other *(specify):*
   e. ☐ by personal delivery on *(date):*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		**DRAFT**
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	**03-18-19**
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		**Not approved by the Judicial Council**
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
Plaintiff:		
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 3l (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 3l 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 an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. *(This defense requires one of the following: (1)* ***a temporary restraining order, protective order, or police report*** *that is not more than 180 days old; OR (2)* ***a signed statement from a qualified third party*** *(e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.)*

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. September 1, 2019]

Civil Code, § 1940 et seq.;
Code of Civil Procedure, §§ 425.12, 1161 et seq.
www.courts.ca.gov

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (cont'd.)
   j. ☐ Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by 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 3*l*.
   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 3*l*.

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 number:
   c. street address, city, and zip code:
   d. county of registration: e. registration number: f. expiration 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)

W19-04

Civil Practice and Procedure: Unlawful Detainer (forms SUM-130 and UD-105)

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

	Commentator	Position	Comment	Committee Response
1.	Lloyd Castles Modesto, CA	AM	Specifically addressing the proposed changes to Form Sum-130, I believe the changes to the statutory notification to the defendant is consistent with, and in full compliance with the intent and specifications of AB 2343. I also like the separation of the English/Spanish interpretations and the re-introduction of the "Notice you have been sued" language. These changes should create a more intensive scrutiny and understanding of the advisements by the defendants, especially the Hispanic litigants. The one concern that I have is the movement of the lower portion of the form to the second page. I believe that to be a counterproductive amendment. I am concerned that the movement of the court's seal, clerks signature, and "notice to the person served" to the second page may prove to be procedurally inefficient to a deputy clerk and a process server if the document is presented in a front side/back side form. Since the normal rule calls for the summons to "tumble" the clerk would have to reverse all of the documents in order to conform and seal the form. It's rather a small inconvenience, but when you are doing it over and over again, it could become an annoyance. The potential affect on a process server is more pronounced, since they are responsible for adding a date when possible to the "Notice to the Person Served". Sometimes, the demeanor and/or actions of the person being served do not allow for the time to enter that date, and	The committee appreciates the comments. The committee considered this and decided to leave the seal, clerk's signature, and notice to the person served remain on page 2, where it was located when the form circulated for comment. The committee noted that courts that responded to the invitation to comment did not expect any significant impact from this change and thought that the seal should be moved to the second page as proposed.

	Commentator	Position	Comment	Committee Response
			effectually that omission does not affect the validity of the service as provided for in CCP45.10. Since most servers and law offices staple the summons on top of the complaint, the server would now have to turn up the page, reverse it to add the date and then provide it to the defendant. That may prove to be more problematic than having that information on the front page. Actually, I question the entire need for a second page. With the removal of the old proof of service which existed on the back side of summons forms, the Civil Summons has evolved into a single sided, efficient document, especially in light of the move to E-Filing and scanning of case documents. However the Sum-103 form has been forced to a second page due to the Unlawful Detainer assistant declaration. Cases filed by pro-per plaintiffs are the specific target of that declaration, whereas that information is virtually redundant to an attorney-filed matter. My suggestion for that would be to keep the declaration that exists in #3 on the Sum-130 Form, only create a second form to be filed if the answer indicates an Unlawful Detainer Assistant was used. This would be similar to the additional forms requirements of small claims cases, i.e. SC-109, SC 103. etc. The amount of extra forms filed would be relatively low, and if properly condensed, the Sum-130 could be a single sided form. Such simplicity would eliminate the need	The committee discussed this and did not think that the form should be reduced to one page by moving the question as to whether an Unlawful Detainer Assistant was used to a different form. In addition, this is outside the scope of the proposal and would need to be circulated for comment if a new form were created.

	Commentator	Position	Comment	Committee Response
			to create separate copies of that second page for E-Filing, copying and scanning. The amendments required to the answer form accomplish the intended goal and will provide affected defendants with the new affirmative defenses, and I agree with those changes without objection.	
2.	Community Legal Services by Jason Tarricone Directing Attorney, Housing Program East Palo Alto, CA	NI	The following comments are submitted by Community Legal Services in East Palo Alto regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law. [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
3.	Family Violence Appellate Project (FVAP) by Taylor Campion, Attorney Housing and Employment Justice Attorney	NI	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law. [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.

W19-04
Civil Practice and Procedure: Unlawful Detainer (forms SUM-130 and UD-105)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	Legal Aid Association of California (LAAC) by Salena Copeland, Executive Director Oakland, CA	NI	I am writing on behalf of the Legal Aid Association of California (LAAC) regarding the Judicial Council's ("Council") Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law. [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
5.	Legal Services of Northern California By Alisha Saska Staff Attorney Woodland, CA	NI	Overall, LSNC supports the proposed changes to both forms UD-105 and SUM-130. However, LSNC believes some language and phrasing on both forms should be updated to make the forms more accessible to pro per litigants. [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
6.	Cristina Llop Family Law Facilitator Superior Court of Mendocino County Ukiah, CA	AM	(1) I am unclear on this language: "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." I am assuming in essence this means a defendant has 5 court days to respond and the hesitation to use "court days"	The commenter's interpretation of the language is correct. The day the response is due cannot be a Saturday, Sunday, or holiday, as those days are excluded—or "not included" —in the calculation of the time period for filing and serving a response.

	Commentator	Position	Comment	Committee Response
			vs. "calendar days" is based on plain language? When showing this to some litigants, they have interpreted as saying that the 5th day cannot be a Saturday, Sunday, or holiday. (2) Propose changing "excluding Saturdays and Sundays and other judicial holidays" to "NOT including Saturdays, Sundays, and court holidays" for plain language purposes. 3) Assuming the Spanish will be finalized after the English is? Currently, the Spanish text is different from the English.	The committee discussed using different language and decided to change the language to "not counting Saturdays and Sundays and other judicial holidays." Yes,
7.	National Housing Law Project Western Center on Law & Poverty by Kara Brodfuehrer Staff Attorney San Francisco, CA	NI	The following comments are submitted by the National Housing Law Project (NHLP), Western Center on Law and Poverty, and other housing advocates regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law. <u>Form UD-105</u> We recommend that both of the defenses (Items 3i and 3j) on the updated Answer form be revised to include simpler words and phrases that would be accessible to a broader audience.	

	Commentator	Position	Comment	Committee Response
			Defendants in unlawful detainer cases have only five days to file a responsive pleading, and many lack resources to pay for an attorney. As a result, many defendants complete Answer forms without legal assistance. Failing to check a box on this form can result in a vulnerable family becoming homeless; it is vitally important that the Answer use clear and simple language so that these litigants have a fair opportunity to assert all relevant defenses. A. Comments Regarding Item 3i The Council should revise the language of Item 3i so that court users, particularly those who are not represented by counsel, can better understand the defense as well as the documentation options. We include recommended revisions to Item 3i at the end of this section. *Statute includes single acts of abuse or violence*. California law protects tenants from landlords who seek to "terminate a tenancy or fail to renew a tenancy based upon an act or acts against a tenant or a tenant's household member" that constitute domestic violence, sexual assault, stalking, human trafficking, and elder/dependent adult abuse.1 The reference to only "acts" may result in the mistaken belief that multiple acts of violence or abuse are required to be entitled to the defense. The statute clearly intends for the eviction defense to	

	Commentator	Position	Comment	Committee Response
			apply in a single instance of violence or abuse. Thus, the form should use the phrase "an act" as opposed to "acts" to ensure users understand that they are entitled to the eviction protection in the context of a single act of violence or abuse. *Documentation from a qualified third party*. Since many users of Form UD-105 will be individuals who lack legal representation, the proposed use of the term "qualified third party," while reflective of the statutory language, is not a commonly used term that would be familiar to unrepresented litigants. Therefore, it is important for the form to, at minimum, provide several examples of what types of professionals are included by the term "qualified third party." Section 1161.3 of the Code of Civil Procedure defines "qualified third party" as "a health practitioner, domestic violence counselor,…a sexual assault counselor,…or a human trafficking caseworker."2 Furthermore, the statute defines "health practitioner" to include "a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor."3 In the recommended text below, we include several examples of these types of professionals to reference on Form UD-105.	The committee agrees and has made this change.

	Commentator	Position	Comment	Committee Response
			1 Code Civ. Proc. § 1161.3 (a) (emphasis added). 2 Code Civ. Proc. § 1161.3(e)(3). 3 Code Civ. Proc. § 1161.3(e)(2). *Recommended language*. Based on the reasons outlined above, we recommend the following text for Item 3i. For the ease of the reader, we also recommend the use of bolded text to identify the options for documentation as noted below. Plaintiff seeks to evict defendant based on an act of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse committed against the defendant or the defendant's household member. (NOTE: Requires one of the following: (1) **a temporary restraining order, protective order, or police repor**t that is not more than 180 days old; OR (2) **a signed statement from a qualified third party** [for example: a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist]). B. Comments Regarding Item 3j We strongly believe that no tenant should have to face the impossible choice between seeking police or emergency assistance, and losing their home. The Council should revise proposed Item	The committee agrees and has added examples of qualified third parties and has bolded the key language on what documentation is required.

	Commentator	Position	Comment	Committee Response
			3j so that court users, particularly pro per tenants, can better understand this new eviction defense. This includes simplifying the language used. Accordingly, we recommend the following text for Item 3j: Plaintiff seeks to evict defendant in response to one or more calls for police or emergency assistance [for example: ambulances] by or on behalf of a victim of abuse, victim of crime, or a person in an emergency when there was a belief assistance was necessary. <u>Form SUM-130</u> We recommend that the Council slightly alter the new language regarding SB 2343 to make it easier for tenants to understand. The proposed text of the English language portion of the form reads as follows: 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. To make this language more accessible to most litigants, the proposed text should be modified as follows:	The committee agrees and has made this change.

	Commentator	Position	Comment	Committee Response
			You have 5 DAYS, not counting Saturdays and Sundays and other court holidays, to file a written response at this court after you receive this summons and legal papers.	The committee discussed this and decided to change "excluding Saturdays and Sundays and other judicial holidays" to "not counting Saturdays and Sundays and other judicial holidays."
			We also strongly encourage the Council to change the Spanish portion of the summons form to accurately state the law. The Council's failure to make this change is particularly surprising given that the effective date of AB 2343 was extended at the request of the Judicial Council to allow for form updates. Failure to modify the Spanish text of the form may lead Spanish-speaking defendants to believe their time to answer a complaint has passed, leading to default judgments for failure to respond despite there still being time to do so. No litigant's rights to defend their home should be impacted by the courts' failure to provide accurate information in their language. The current text of the Spanish language portion of the form reads as follows: 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. (Para calcular los cinco días, cuente los sábados y los domingos pero no los	Changes will be made so that the Spanish language part of the form matches the English part.

	Commentator	Position	Comment	Committee Response
			otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). To align with the proposed changes to the English text of the form and accurately state the law, and to incorporate our suggestions, the Spanish text should be modified as follows (insertions in italics, deletions in ~~strikethrough~~): AVISO! Tiene 5 DÍAS ~~DE CALENDARIO~~,no contando sábado, domingo y días festivos de la corte, para presentar una respuesta por escrito en esta corte, después de que reciba esta citación y documentos legales. (~~Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito).~~ In addition, the "Fee Waiver" language is set off in a separate box for the English section on the Summons. The fee waiver section on the Spanish section of the form should also be set apart in a box to make it easier to read. Finally, there are several minor changes that would make this important form easier to understand. First, to ensure that litigants see the language at the top of the box informing them of	

	Commentator	Position	Comment	Committee Response
			the time during which they must respond, we encourage the Council to set off the first two sentences, in English and in Spanish, by using bold font. To improve readability of this form, we also suggest breaking up the text in the English and Spanish boxes to three paragraphs rather than two long paragraphs. We suggest a break between the sentences "Your response must be in the proper legal form" and "There may be a court form…" On the Spanish side, the break would appear between "Su respuesta por escrito tiene que estar…" and "Es posible que…" These paragraphs should be broken down into smaller sections organized by topic and each section should have its own heading. For example: 1) NOTICE! This paragraph should contain the basic information about what SUM-130 is and when the defendant's responsive pleading is due. 2) WHAT YOU SHOULD DO: This paragraph should contain the advisory to seek legal assistance immediately and the information about how a response must be filed. 3) WHERE TO GO FOR HELP:	

	Commentator	Position	Comment	Committee Response
			This paragraph should advise defendants to seek assistance in person at the court's self-help center or online. General Changes to Both Forms We also recommend making some further changes to both forms to increase their readability and accessibility for litigants with limited English proficiency and limited literacy skills. We recommend the following: □ Avoid long sentences with many clauses separated by commas. Although this type of sentence structure is common in legal writing, it often leads to confusion and misunderstanding for people without a legal background. These sentences should be broken down into separate, shorter sentences. □ Break up long paragraphs of dense text into smaller sections. Individuals with limited English proficiency and limited literacy skills often struggle to read and comprehend long sections of prolix text. □ Use a variety of text formatting options throughout the forms. Individuals with limited English proficiency or limited literacy skills would be able to understand and appropriately utilize the forms if the key words/phrases and instructions stood out from the rest of the text using italics, **bold font,** underlining, larger font size, ALL CAPS, and creative combinations	The committee appreciates the comments and agrees that form readability is important. There is no plain language version of this form and the suggestions are outside the scope of this proposal.

	Commentator	Position	Comment	Committee Response
			thereof. For example, to ensure that litigants see the language at the top of the box informing them of the time during which they must respond, we encourage the Council to set off the first two sentences, in English and in Spanish, by using **bold** font. We also encourage the Council to revise the entire UD-105 entirely to make it more accessible in form and content to pro per litigants. UD-105 should be drafted in a manner similar to the forms used in Small Claims cases and petitions for Restraining Orders. Those forms use simple language that a party with limited formal education is likely to understand. The language should be accessible for a party with a 7th or 8th grade reading level to understand. Visually, UD-105 should be structured to support reading comprehension for those with limited literacy skills. It should contain ample blank spaces for parties to fill in facts necessary to support their defenses. Nationwide and California-specific statistics show that landlord/tenant matters are one of the most common legal substantive areas to have self-represented litigants.4 While self-help centers and legal services are able to assist some of these litigants, lack of resources and capacity (and the expedited timeline of eviction proceedings) leave many tenants in the position of preparing answers to unlawful detainers on	

	Commentator	Position	Comment	Committee Response
			their own. This leaves these litigants vulnerable to making procedural mistakes that could (unnecessarily) lead to the loss of a place to live. Accordingly, we strongly urge the Council to create an information sheet as a companion to UD-105, in order to assist tenants in the preparation, filing, and service of unlawful detainer answers. Similar information sheets are already available for other substantive areas with large volumes of pro se litigants including family law matters. (See e.g., DV-505-INFO; DV-520-INFO; FL-300-INFO). We are part of a larger network of California housing advocates that would be willing and eager to engage in a broader conversation about the accessibility of court forms that are of crucial importance to tenants across the state. It is our sincere hope that this is the beginning of a longer dialogue about ways in which the California courts can be more accessible to tenants, particularly those tenants who represent themselves. 4 The Self-Help Center Census:A National Survey, American Bar Association Standing Committee on the Delivery of Legal Services (August 2014); California Courts Self-Help Centers Report to the California Legislature (June 2007) (available at: www.courts.ca.gov/documents/rpt_leg_self_help.pdf).	

W19-04

Civil Practice and Procedure: Unlawful Detainer (forms SUM-130 and UD-105)

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

	Commentator	Position	Comment	Committee Response
8.	Orange County Bar Association by Deirdre Kelly, President Newport Beach, CA	A	The revised forms are clear and accurately reflect the statutory affirmative defenses. The forms clarify calendaring issues with respect to the due date of a responsive pleading (i.e. eliminating weekends and holidays from 5 day period).	No response needed.
9.	Superior Court of Los Angeles County Los Angeles, CA	A	• **Does the proposal appropriately address the stated purpose?** Yes. • **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?** No significant impact expected due to this change. 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.** No cost savings have been identified at this point.	The committee appreciates the response to specific questions and thanks the commenter.

	Commentator	Position	Comment	Committee Response
			• **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Implementation will require training clerical and supervisory staff, revising procedures and modifying case management system. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** No, at least 6 months would be needed to fully implement.	
10.	Superior Court of San Diego County by Mike Roddy Court Executive Officer San Diego, CA	A	**Q: Does the proposal appropriately address the stated purpose?** Yes. **Q: 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 committee appreciates the response to specific questions and thanks the commenter.

	Commentator	Position	Comment	Committee Response
			No, the seal should be moved to the second page as proposed. However, it is requested based on the new layout of the form that the case number be moved directly underneath the file stamp box. **Q: Would the proposal provide cost savings? If so, please quantify.** No. **Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Training staff (business office and courtroom clerks), updating local packets, case management system, and internal procedures. **Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **Q: How well would this proposal work in courts of different sizes?** It appears that the proposal would work for courts of all sizes.	The committee left the seal on the second page as proposed and kept the case number where it appears on the existing form across from the court name and address. The committee believes that the information to the person sued should be first and therefore above the case number.

W19-04

Civil Practice and Procedure: Unlawful Detainer (forms SUM-130 and UD-105)

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

	Commentator	Position	Comment	Committee Response
11.	Theresa Williams Pasadena, CA	N	The unlawful detainer process violates due process rights of the people and helps third party debt collectors cover up a fraudulent financial and rent skimming scheme that traffics victims in debt slavery for a unsecured loan that was issued to a fictitious alias borrower. Deeds of Trust ("DOT") appearing for Real Estate and recorded in the County Recorder's Office are not for immovable property as in land and building but for Tangible Personal Property as in moveable. The DOT is indexed and an examiner did not verify the type of property involved (real estate, immovable or moveable and did not claim it to be secured and or unsecured. (To obtain that answer, you will need to ask the tax assessor) It is presumed that the recording was perfected but the notary public only verifies the signatures but not the content of the DOT which is a contract not for a mortgage but for the asset of Tangible personal property other than real estate that has value. The DOT does not place a lien on real estate, land and building, immovable property and the trustee who indexes a notice of default and trustee sale has knowledge that the DOT is unsecured and holds a trustee sale selling the DOT to a third party purchaser who doesn't report the consideration and is exempt from paying taxes because the purchase was under $25,000. The third party purchaser moves for an unlawful detainer hoping to trick the homeowner into believing the DOT is for real	The comment is outside the scope of the proposal and the committee, therefore, has no response.

	Commentator	Position	Comment	Committee Response
			estate immovable property and knowing that its authority and asset is tangible personal property. The courts assist in concealing the scheme by processing the defaults or judgments and identifying the property as real estate but it does not identify the property as immovable or moveable. When a writ for possession is issued, the Sheriff's (contracted and under Admiralty Jurisdiction) are to remove the tangible personal property which is moveable but presumes the writ involves land & building and threatens the occupants (the actual owners) to leave. At no time was proof provided to the court revealing the holder in due course of the contract involving real estate, land and building, immovable property AND if the homeowner puts in a motion for proof of a payoff to the holder or any information relating to the foreclosure, they are denied due process.	

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Restraining Orders: Senate Bill 1200 Hearing Requirement for Gun Violence Restraining Orders
Adopt forms GV-020 and GV-030; approve forms GV-009, GV-020-INFO, and GV-025; revise forms EPO 002, GV-200, GV-800, and GV-800-INFO

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Commitee

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.)
These forms have been circulated for comment and have been revised accordingly and are ready for Judicial Council review and approval.

JUDICIAL COUNCIL OF CALIFORNIA

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

For business meeting on May 16–17, 2019

Title
Restraining Orders: Senate Bill 1200 Hearing Requirement for Gun Violence Restraining Orders

Rules, Forms, Standards, or Statutes Affected
Adopt forms GV-020 and GV-030; approve forms GV-009, GV-020-INFO, and GV-025; revise forms EPO-002, GV-200, GV-800, and GV-800-INFO

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
April 3, 2019

Contact
Kristi Morioka, 916-643-7056
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Anne M. Ronan, 415-865-8933
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Executive Summary

The Civil and Small Claims Advisory Committee recommends adopting two mandatory and approving three optional gun violence restraining order (GVRO) forms and revising four current GVRO forms to facilitate courts and parties in complying with the new hearing requirement in Penal Code section 18148. The proposal also revises the current GVRO forms relating to a restrained party providing proof of the surrender or sale of firearms, ammunition, and magazines to more clearly reflect the statutory provisions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019:

1. Adopt the following mandatory forms to implement the new hearing requirement in Penal Code section 18148:

- Form GV-020, *Response to Gun Violence Emergency Protective Order*;
- Form GV-030, *Gun Violence Restraining Order After Hearing on EPO-002*;

2. Approve the following optional forms to implement the new hearing requirement:
   - Form GV-009, *Notice of Court Hearing*;
   - Form GV-020-INFO, *How Can I Respond to a Gun Violence Emergency Protective Order*;
   - Form GV-025, *Proof of Service by Mail*;
3. Revise the following forms to add complete instructions for persons turning in guns, ammunition, and magazines pursuant to a gun violence restraining order:
   - Form GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored*;
   - Form GV-800-INFO, *How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?*; and
4. Revise form EPO-002, *Gun Violence Emergency Protective Order,* and form GV-200, *Proof of Personal Service.*

The new and revised forms are attached at pages 10-27.

Relevant Previous Council Action

Recently enacted Senate Bill 1200 (Stats. 2018, ch. 898) amended the Gun Violence Restraining Orders Act[1] in several ways, effective January 1, 2019, including prescribing that orders under Penal Code section 18100 et seq. be referred to as gun violence restraining orders, expanding the definition of ammunition to include a magazine, prohibiting a filing fee for GVRO forms and documents, requiring a law enforcement officer to make a specific request when serving a GVRO, and providing that parties do not need to pay the sheriff for service of a GVRO. In order to ensure that the Judicial Council GVRO forms were 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.

Analysis/Rationale

SB 1200 implemented a new hearing requirement for temporary emergency gun violence restraining orders[2] (also called gun violence emergency protective orders or EPOs) issued with form EPO-002 by adding Penal Code section 18148. Under the new law, the court must hold a hearing within 21 days of the issuance of a gun violence emergency protective order. The Civil and Small Claims Advisory Committee proposed five new GVRO forms and four revised GVRO forms to facilitate courts and parties in complying with the new hearing requirement in Penal Code section 18148. The proposal also revised the current GVRO forms relating to a restrained

[1] Assem. Bill 1014 (Stats. 2014, ch. 872).

[2] Pen. Code, § 18125.

party providing proof of the surrender or sale of firearms, ammunition, and magazines to more clearly reflect the statutory provisions.

As of January 1, 2019, new Penal Code section 18148[3] provides:

> Within 21 days after the date on the order, the court that issued the order or another court in the same jurisdiction, shall hold a hearing pursuant to Section 18175 to determine if a gun violence restraining order should be issued pursuant to Chapter 4 (commencing with Section 18170) after notice and hearing.

This section is specific to chapter 2, Temporary Emergency Gun Violence Restraining Order (in part 6, title 2, division 3.2 of the Penal Code), which is the chapter authorizing issuance of the *Gun Violence Emergency Protective Order* (form EPO-002). These orders are issued on an ex parte basis at the request of a law enforcement officer (generally over the phone) when a judicial officer finds that there is reasonable cause to believe that "the subject of the petition *poses an immediate and present danger of causing personal injury* to himself, herself, or another" by having a firearm or ammunition. (§ 18125, emphasis added.)

Process for issuance of a GVRO

The process for issuance of a GVRO is essentially as follows: When a law enforcement officer is in a situation where a subject has firearms or ammunition within his or her custody and control and poses an immediate danger of causing injury, the officer calls the judicial officer on duty to obtain an EPO. The law enforcement officer provides a statement of the grounds for the judicial officer to issue the EPO orally and fills out form EPO-002 as it is issued. The law enforcement officer serves the EPO and requests the restrained person to immediately surrender any firearms, ammunition, and magazines to the officer.[4] The officer submits the completed form EPO-002 to the court as soon as practicable. (§ 18140.) The EPO lasts 21 days (§ 18125(b)) and the expiration date is noted on the form.

Before January 1, 2019 (the effective date of SB 1200), no hearing was held following the issuance of an EPO unless either law enforcement or a family member of the restrained person petitioned the court seeking a longer-term order, either an ex parte gun violence restraining order (under section 18160 et seq.) or a gun violence restraining order issued after notice and hearing (under section 18170 et seq.). In either event, the petitioner, law enforcement, or a family member was required to provide notice to the restrained party of the hearing.

New hearing required following issuance of a gun violence EPO

Under the new law, however, the court is required to set a hearing upon the issuance of an EPO, to be held regardless of whether a longer restraining order is requested by the law enforcement officer or family member. New section 18148 requires the court to "hold a hearing pursuant to

[3] Unless otherwise noted, all statutory references hereafter are to the Penal Code.

[4] If no request is made, then the restrained person has 24 hours to surrender his or her firearms, ammunition, and magazines to law enforcement or sell or store them with a licensed gun dealer.

section 18175 to determine if a gun violence restraining order should be issued pursuant to [the statutes starting at section 18170] after notice and hearing." The sections referenced in the new statute relate to orders issued after notice and hearing, which last for one year.

Form EPO-002, which triggers the hearing requirement, is being revised to include a box for the court's filing stamp, with a box for the court address immediately underneath. A line for the restrained party's address has been added to item 1, and one for the law enforcement agency address in item 10, so that the court will know where to serve notice of the newly required hearing. In addition, the Warnings and Information section for the restrained party on the back of the form—which was revised effective January 2019 to include the statement, "The court will hold a hearing within 21 days to determine if a longer term order should be issued"—will be expanded to provide information as to where notice of the hearing will be sent and how to respond. The form is also being amended to allow the court to issue a hearing date and time that the officer can write on the form and serve to the restrained person, if the court has the ability to do so, or indicate on the form that a hearing date and time will be sent to the restrained person at the address listed on the form.

New forms

Existing judicial council forms cannot be adequately amended to include the hearing required to be held by section 18148 because the court originates the hearing generated from form EPO-002 Therefore, a new series of GVRO forms was created to implement the statutory hearing requirements. *Notice of Court Hearing* (form GV-009) is an optional form for courts to use to provide notice to the restrained party of the date and time of the hearing. This separate notice is being proposed because in some jurisdictions, the judicial officer would not practicably be able to provide a hearing date with any certainty during the application for the EPO. Proposed form GV-009 may be used by the court to send notice of the hearing to the restrained party and the law enforcement agency. (It is not a mandatory form, and another type of notice of a court hearing generated by the court may be used.) As noted above, there is no actual petitioner in the action at this point. The new form therefore addresses the "Requesting Agency" and "Restrained Person" rather than "Petitioner" and "Respondent" or "Restrained Party." (This same format is used in the other new forms as well.)

The restrained person can use the proposed *Response to Gun Violence Emergency Protective Order* (form GV-020) to oppose the court's issuance of a longer-term GVRO at the new hearing. The form is referenced on the EPO itself. Form GV-020 provides space for the restrained party to respond to the EPO, explain any disagreements with the statements of the law enforcement officer on that form, and to state any reasons for opposing a longer restraining order. The proposed form parallels the current *Response to Petition for Gun Violence Restraining Order* (form GV-120).

How Can I Respond to a Gun Violence Emergency Protective Order? (form GV-020-INFO) is an information sheet designed to answer questions for the restrained person and provide him or her resources when filling out the response. It explains how to respond to a gun violence EPO,

that the filing fee is free, that the restrained person should show up for the hearing, and other information the committee determined to be important for the restrained party to know.

The information sheet notes that that the restrained party must have the response served on the law enforcement agency that served the EPO and must file a proof of service. The proposed *Proof of Service by Mail* (form GV-025) has been specifically developed so it can be used for that purpose, because the current proof of service form for GVROs does not provide for service on law enforcement or for service by mail.

Gun Violence Restraining Order After Hearing on EPO-002 (form GV-030) has been developed for a judicial officer to use upon a determination that the facts warrant a longer GVRO. The content parallels that of *Gun Violence Restraining Order After Hearing* (form GV-130).

Revised forms for proof of surrender of firearms, ammunition, and magazines

The proposal also includes revised *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (form GV-800) and the information sheet *How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?* (form GV-800-INFO), which have been revised to more accurately reflect the law that not only firearms, but also ammunition and, under the new legislation, "magazines" must be surrendered.

Form GV-800 is the receipt to prove that the restrained party complied with the GVRO. The restrained party is required to file the form, signed by a law enforcement officer or a licensed gun dealer, with the court and provide a copy to the law enforcement agency that served the GVRO.[5] The proposed revisions correct some grammatical issues and add "ammunition" and "magazines" to the text wherever the form currently lists only firearms, or firearms and ammunition. The revised form also includes two new items to allow the party completing the form to list the ammunition and magazines (rather than just firearms) turned in, sold, or stored, including the magazine make, model, and number, and ammunition brand, type, and amount. The information about the ammunition mirrors the information that a licensed gun dealer has to include when selling ammunition in California, as required by section 30352. (See new items 7b and c.) As in the item for firearms (item 7a), in the instance where there are more items than lines provided, a party can use form MC-25 to list additional items.

The information sheet, *How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?* (form GV-800-INFO), was also revised. It currently asks, "What is a firearm?" and provides the answer as a handgun, shotgun, rifle, or assault weapon. The revised form would be changed to say, "A firearm includes" instead of "A firearm is" to provide more inclusive language, and would add similar examples for the question, "What is ammunition?"

Policy implications

This proposal would implement the council policy to update forms to conform to current law. It also provides an avenue for the courts to properly notice a new hearing for GVROs. Creating

[5] Pen. Code, § 18120(b)(2)(A) & (B).

forms specifically tailored to this new hearing requirement will assist the courts and litigants in preserving important rights in relation to public safety and due process.

Comments

This proposal circulated for comment from December 11, 2018, to February 12, 2019. Comments were received from 10 individuals and entities including law enforcement, the courts, and public interest groups. Comments were received from the Giffords Law Center to Prevent Gun Violence (Giffords Law Center), the Orange County Bar Association, the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, an individual attorney, the San Diego City Attorney's Office, and the Superior Courts of Los Angeles, Orange, Santa Cruz, San Diego, and Ventura Counties. All commenters agreed with the forms, although some asked for further modifications. The text of all the comments received is set out in the attached comments chart at pages 28-57, along with the committee's responses to each one; the principal ones are summarized below under the pertinent form.[6]

Form EPO-002, Gun Violence Emergency Protective Order

This is an existing form utilized by law enforcement as described above. The form is often produced in triplicate to facilitate having copies in the field to allow for immediate service on the restrained person. In response to comments requesting a space for a hearing date on form EPO-002, the committee further modified the circulated form to provide the option to include a hearing date and time when the EPO-002 is issued. In order to fit this new item in, the notices to the restrained party were reorganized (former items 2 and 5 were combined) and the proof of service was reorganized.

Form GV-009, Notice of Court Hearing

The law enforcement officer is required to file the issued form EPO-002 with the court as soon as practicable after issue. Form GV-009 will allow the court to set a date that fits with the court schedule and then send out its own notice. A comment from the San Diego City Attorney's office generated a question about whether mail service is proper in this instance. The committee concluded that service by mail is sufficient because the court will already have obtained jurisdiction over the restrained party through personal service of the EPO.

Form GV-020, Response to Gun Violence Emergency Protective Order

This form is mandatory for a restrained person to use when he or she responds to a hearing on form EPO-002. A comment from the Giffords Law Center requesting more space in items 4 and 5 for denying the grounds for the restraining order was included in the form revision. Minor

[6] Note that some commenters proposed new or revised forms for continuances of the new post-EPO hearings. Those comments are responded to in the comments chart, but the revised forms (forms GV-115 and GV-116) are included with the Judicial Council Invitation to Comment titled Protective Orders: Revisions to Continuance Forms that includes revisions to all protective order continuance forms.

technical edits were suggested by the Los Angeles Superior Court and the Giffords Law Center and were incorporated into the form.

Form GV-020-INFO, How Can I Respond to a Gun Violence Emergency Protective Order?
This form is used to provide guidance to the restrained person following the service of an EPO or a hearing notice on an EPO. In response to comments received, this form was modified to include specific instructions that this proof of service is used for serving *Response to Petition for Gun Violence Restraining Order* (form GV-120) on the requesting agency.

Form GV-030, Gun Violence Restraining Order After Hearing on EPO-002
This is the order form for use by the judicial officer following a hearing on an EPO. Upon review of this form following circulation for comment, the committee further revised it to include provisions to be used when the court decides at the post-EPO hearing to *not* grant a longer GVRO at the end of the EPO. This includes items for findings to justify terminating the EPO-002 and an order dissolving or terminating the EPO under section 18175.[7]

Form GV-200, Proof of Personal Service
This is the personal service form that is used in all GVRO cases. In response to comments received, form GV-200 is being revised to add form EPO-002 and the new order (form GV-030) to the list of documents with which it may be used. (See item 4a.)[8]

Timing of filing EPO with the court
In addition to the comments about the individual forms, the committee received comments about the procedures for setting the new post-EPO hearings. Of particular note, comments from the Superior Courts of Orange and Los Angeles Counties and the JRS suggest that a legislative fix is needed to establish a better process for triggering the time frame for the hearing, by establishing in the statute a set deadline by which the law enforcement officer issuing the EPO must file the order with the court. The commenters note that, since the issuance (not the filing) of the EPO is what triggers the 21-day period in which the new post-EPO hearing must be held, it is possible that the period could run without the court having adequate time to set and provide notice of a timely hearing to the restrained party. Staff has learned that some law enforcement agencies may take as long as a week before filing EPO forms with the courts, which could make setting a timely hearing problematic, especially in those courts in which the hearing date is not provided on the EPO.

Currently the law requires the law enformcement officer to file the EPO with the court "as soon as practicable after issuance."[9] The commenters urged the Judicial Council to work with the

[7] This section mandates that an emergency order be dissolved if the year-long GVRO is not granted at a hearing.

[8] See section 18197 (personal service of the GVRO after hearing required if restrained party not present at the hearing).

[9] Section 18140 states:

Legislature to provide a more specific deadline within the statute. The committee will address these comments in a future proposal that will suggest adding the language "within three business days after the date of issuance" to section 18140(c), for introduction to the Legislature in January 2020 if approved by the council.

Form GV-800, Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored
This is the receipt filed with the court and the law enforcement agency to prove that the restrained party complied with the GVRO. There were no specific comments received on the revisions to this form.

The committee asked for specific comments as to whether an additional form should be created to use as an attachment to form GV-800 to provide a form on which to list other firearms, ammunition, or magazines. Two commenters were in favor of such a form. However, the committee decided not to recommend such a form, concluding that fewer forms were better overall from a public policy standpoint, and noting that the public and the courts were used to using and receiving form MC-25, the standard attachment form.

Form GV-800-INFO, How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?
This is the information sheet that is used to provide information to the restrained party when he or she has not relinquished his or her guns, ammunition, and magazines to law enforcement or if he or she has additional items subject to the restraining order. Several examples of ammunition are included in this form, but because SB 1200 includes a statutory definition for magazine, that definition is used for that category. In response to comments received, some other minor changes have been made to the language of the form to make it more user-friendly.

Alternatives considered

The committee considered not recommending any new forms for the post-EPO hearings, but concluded that they are needed to facilitate the court's holding and the restrained party appearing at the newly required hearings.

The committee considered not making any notice form (the proposed GV-009), instead leaving courts to create their own notices as they do in many case types. However, the committee

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> A law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:
>
> (a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.
>
> (b) Serve the order on the restrained person, if the restrained person can reasonably be located.
>
> (c) *File a copy of the order with the court as soon as practicable after issuance.*
>
> (d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.
>
> (Emphasis added.)

concluded that at least an optional notice form should be created for use by courts that do not have a case management system that can automatically populate such notices.

The committee considered whether to make form EPO-002 a longer document to more clearly display the information, but because the form is used by law enforcement in carbon copy duplicate, an effort was made to keep it to one fill-in page. The committee was also concerned that the officer would not get hearing information in time to be able to put it on the EPO-002 form, so the committee decided to include the option of a check box that a court hearing will be set within 21 days or listing the hearing date and time.

Fiscal and Operational Impacts

While the requirement for new hearings will have fiscal and operational impacts on the courts, they are mandated by statute. 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 may need to be developed.

Attachments and Links

1. Forms EPO-002, GV-009, GV-020, GV-020-INFO, GV-025, GV-030, GV-200, GV-800, and GV-800-INFO, at pages 10-27.
2. Chart of comments, at pages 28-57.
3. Senate Bill 1200 (Stats. 2018, ch. 898), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1200*

EPO-002
GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

1. **RESTRAINED PERSON** *(insert name):* _____
Address: _____

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 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.
If you have any firearms, ammunition, and magazines, you MUST IMMEDIATELY SURRENDER THEM if asked by a police officer. If a police officer does not ask you to surrender any of the above, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. **If you do not file a receipt within 48 hours you have violated this order and can go to jail.**

3. **This order will last until:** _____ **TIME** _____
INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. **Court Hearing** ☐ A court hearing will be set within 21 days.
☐ A court hearing will take place at the court above on: Date: _____ Time: _____
You must go to the court hearing if you do not want this restraining order against you. At the hearing, the judge can make this order last for up to 1 year.

5. 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.

6. Judicial officer *(name):* granted this order on *(date):* at *(time):*

Clerk stamps date here when form is filed.

DRAFT
03-29-19

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:

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist *(state supporting facts and dates; specify weapons—number, type and location):*

8. ☐ 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.: _____
Address: _____

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.
Date of service: _____ Time of service: _____ Address:

10. At the time of service, I was at least 18 years of age.

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/LAW ENFORCEMENT OFFICER) (SIGNATURE OF SERVER)

WARNINGS AND INFORMATION

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, 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, Ammunition, and Magazines Turned In, Sold, or Stored.*

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. If the date and time are not stated in item 4 on the front, you will get a notice with the date and time of the hearing in the mail at the residential address listed on page 1 of this form. If you would like to respond to this order you may use Form GV-020, *Response to Gun Violence Emergency Protective Order.* A family member may also 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 so a hearing can be set, if one was not already scheduled. If the court did not give you a hearing date when issuing the order (to put in item 4 on the front), the court will set a hearing within 21 days and will provide you with notice of the hearing. 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.

GV-009 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT
3/29/19
Not approved by
the Judicial Council

1 Requesting Agency

a. Law enforcement agency that applied for the Gun Violence Emergency Protective Order: _____

_____

b. Name of law enforcement officer: _____

_____

Fill in court name and street address:

Superior Court of California, County of

2 Restrained Person

Full Name: _____

Address: _____

_____

_____

Court fills in case number.

Case Number:

3 Hearing

A *Gun Violence Emergency Protective Order* (form EPO-002) having been served on the Restrained Person, the court will hold a hearing at the time and place below to determine if a longer-term gun violence restraining order should be issued.

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause, and that a true copy of the *Notice of Court Hearing* was mailed first class, postage fully prepaid, in a sealed envelope, addressed as shown below, and that the notice was mailed at (place): , California, on (date):

Date: Clerk, by _____, Deputy

Name and address of law enforcement officer and agency

Name and address of Restrained Person

GV-020 Response to Gun Violence Emergency Protective Order

Clerk stamps date here when form is filed.

DRAFT
03-29-19
Not approved by the Judicial Council

Use this form if you do not want the court to extend the Gun Violence Emergency Protective Order for a longer period.

- Read *How Can I Respond to a Gun Violence Emergency Protective Order?* (form GV-020-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 law enforcement agency that applied for the EPO-002. *(Use,* Proof of Service by Mail, *form GV-025.)*

Fill in court name and street address:

Superior Court of California, County of

See Notice of Hearing for case number and fill in:

Case Number:

1 Requesting Agency

2 Restrained Person

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. You do not have to give telephone, fax, or e-mail address.)*

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

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from the Notice of Hearing here:

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

You must obey the Gun Violence Emergency Protective Order until the expiration date. At the hearing, the court may make an order against you for one year.

3 Gun Violence Restraining Order

☐ I do not agree that a gun violence restraining order should be issued 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.

Case Number:

4 ☐ Denial, Justification, or Excuse

☐ I did not do anything described in item 6 of form EPO-002.

☐ If I did some of the things stated in the Gun Violence Emergency Protective Order, 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 4–Denial, Justification, or Excuse" as a title. Use form MC-025,* Attachment.

5 Surrender of Guns, Ammunition, and Magazines

A *Gun Violence Emergency Protective Order* (form EPO-002) was issued. You cannot own or possess any guns, other firearms, ammunition, or magazines. You must surrender any of these items in your possession to law enforcement when they ask you to do so. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any other guns, other firearms, ammunition, or magazines in your immediate possession or control within 24 hours of being served with form EPO-002. You must file a receipt with the court and the law enforcement agency. You may use, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (form GV-800) 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.

6 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*

GV-020-INFO How Can I Respond to a Gun Violence Emergency Protective Order?

DRAFT
03/29/19

What is a Gun Violence Emergency Protective Order?

It is a court order requested by law enforcement 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 Emergency Protective Order?

The Gun Violence Emergency Protective Order must have been requested by a law enforcement officer and was issued by a judicial officer based on the statements made under penalty of perjury in the protective order.

I've been served with a *Gun Violence Emergency Protective Order* (form EPO-002) and a *Notice of Court Hearing*. 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. Follow the *Gun Violence Emergency Protective Order* (form EPO-002) 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 expiration date on the form.

What if I don't obey the emergency protective 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 has been issued and do not want the court to extend it for a longer time, fill out *Response to Gun Violence Emergency Protective Order* (form GV-020), before your hearing date. File the form with the court and serve it on the requesting law enforcement agency. 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 the completed, *Response to Gun Violence Emergency Protective Order* (Form GV-020), to the law enforcement agency that issued the *Gun Violence Emergency Protective Order* (form EPO-002). (This is called "service by mail.")

The person who serves the form by mail must fill out *Proof of Service by Mail* (form GV-025). Have the person who did the mailing sign the original form GV-025. 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 the *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.

How Can I Respond to a Gun Violence Emergency Protective Order?

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 *Declaration* (form MC-030), 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?

The *Gun Violence Emergency Protective Order* (form EPO-002) will last until the expiration date listed on the front of the form in item 3. The court will decide at the hearing whether to issue a gun violence restraining order that can last for one year.

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

It's possible the law enforcement officer may appear at the court hearing.

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. To request an interpreter, you may use form INT-300. You should also check your local court's website via Find My Court for additional information on how to request an interpreter for a civil matter. 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.]

GV-025 Proof of Service by Mail

(Use this form for serving form GV-020, Response to Gun Violence Emergency Protective Order*)*

Clerk stamps date here when form is filed.

DRAFT
04/03/19
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 Requesting Agency

Full Name: _____

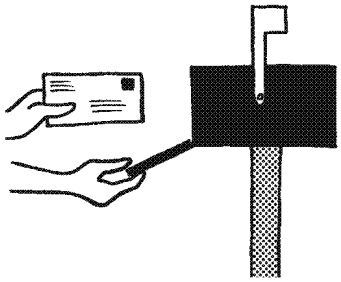
2 Restrained Person

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 agency in 1.
- Complete and sign this form and give it to the person in 2.



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 Requesting Agency a copy of all documents checked below:

a. Form GV-020, *Response to Gun Violence Emergency Protective 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)*: _____
Law enforcement agency: _____

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

GV-030 Gun Violence Restraining Order After Hearing on EPO-002

Clerk stamps date here when form is filed.

DRAFT
04-03-19
Not approved by the Judicial Council

The court will complete this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Requesting Agency

a. Law enforcement agency that applied for the Gun Violence Emergency Protective Order: _____

_____

b. Name of law enforcement officer: _____

_____

2 Restrained Person

Full Name: _____

b. Lawyer *(if there is one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Description of Restrained Person

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

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

Home Address: _____

City: _____ State: _____ Zip: _____

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.

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 officer or representative of the Requesting Agency _____

_____

(2) ☐ The Restrained Person ☐ Lawyer for the Restrained Person *(name):* _____

This is a Court Order.

5 Findings

a. ☐ The court finds by clear and convincing evidence that the following are true:

(1) The Restrained Person poses a significant danger of causing personal injury to himself or 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 the Restrained Person 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.

(3) ☐ The court has received credible information that the Restrained Person owns or possesses one or more firearms, ammunition, or one or more magazines.

(4) ☐ The facts as stated in the *Gun Violence Emergency Protective Order* (form EPO-002) and supporting documents submitted at the time of the hearing, which are incorporated here by reference, and for the reasons set forth below, establish sufficient grounds for the issuance of this Order.

☐ See the attached form MC-025, *Attachment*

b. ☐ A Gun Violence Restraining Order is not being issued for the reasons below:

This is a Court Order.

6 Order

a. ☐ **Order Prohibiting All Firearms, Ammunition, and Magazines**

(1) 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).

(2) You must:

(a) 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.

(b) 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, Ammunition, and Magazines 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.**

b. ☐ **Order dissolving (terminating) *Gun Violence Emergency Protective Order*.**

The court dissolves (terminates) the *Gun Violence Emergency Protective Order* (form EPO-002) originally issued on *(date):* _____ as of *(date of hearing):* _____ .

7 Service of Order on the Restrained Person

a. ☐ The Restrained Person personally attended the hearing. No other proof of service is needed. The clerk has provided the Restrained Person with a blank copy of, *Request to Terminate Gun Violence Restraining Order* (form GV-600), if a restraining order was granted.

b. ☐ The Restrained Person did not attend the hearing. The Restrained Person must be personally served with a court file-stamped copy of this order and a blank copy of *Request to Terminate Gun Violence Restraining Order* (form GV-600), if a restraining order was granted.

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

Date: _____ _____

Judicial Officer

Warnings and Notices to the Restrained Party

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 firearms, 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 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 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 Restrained Person 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 that have not already been turned in.
- Order the Restrained Person to immediately surrender all firearms, ammunition, and magazines to him or her.
- Issue a receipt to the Restrained Person 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, Ammunition, and 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 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 Restrained Person 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 Restrained Person 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 Restrained Person had notice of the order. Consider the Restrained Person "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file;
- The Restrained Person was informed of the order by an officer; or
- Item 7a is checked, the Restrained Person attended the hearing.

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 on EPO-002* 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 on EPO-002* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

GV-200 Proof of Personal Service

Clerk stamps date here when form is filed.

DRAFT
03-29-19
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/Requesting Agency

Name: _____

2 Respondent/Restrained Person

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/Restrained Person. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the Petitioner.

PROOF OF PERSONAL SERVICE

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

a. ☐ GV-030, *Gun Violence Restraining Order After Hearing on EPO-002*
b. ☐ GV-100, *Petition for Gun Violence Restraining Order*
c. ☐ GV-109, *Notice of Court Hearing*
d. ☐ GV-110, *Temporary Gun Violence Restraining Order*
e. ☐ GV-116, *Order for Continuance and Notice of New Hearing Date*
f. ☐ GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)
g. ☐ GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*
h. ☐ GV-130, *Gun Violence Restraining Order After Hearing*
i. ☐ GV-600, *Request to Terminate Gun Violence Restraining Order* (blank form)
j. ☐ GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (blank form)
k. ☐ Other *(specify):* _____

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

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*

GV-800 Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored

Clerk stamps date here when form is filed.

DRAFT
4-1-19
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/Requesting Agency

Name: _____

2 Respondent/Restrained Party

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 To the Respondent/Restrained Person

The court has ordered you to surrender all of your firearms, ammunition, and magazines by turning them in to law enforcement or by selling them to or storing them with a licensed gun dealer. You may use this form to prove to the court that you have obeyed its orders. When you deliver your unloaded firearms, ammunition, and magazines, ask the law enforcement officer or the licensed gun dealer to complete item 4 or, 5 and item 7.

4 To Law Enforcement

Fill out this box and item 7 of this form. Keep a copy and give the original to the person who turned in the firearms, ammunition, or magazines.

The items listed in 7 were turned in on:

Date: _____ at: _____ ☐ a.m. ☐ p.m.

To: _____

Name and title of law enforcement agent

_____

Name of law enforcement agency

_____

_____

Address

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

▶ _____

Signature of law enforcement agent

Badge Number: _____

5 To Licensed Gun Dealer

Fill out this box and item 7 of this form. Keep a copy and give the original to the person who sold you the firearms, ammunition, or magazines or stored them with you.

The items listed in 7 were:

☐ sold ☐ stored on:

Date: _____ at: _____ ☐ a.m. ☐ p.m.

To: _____

Name of licensed gun dealer

_____ _____

License number *Telephone*

_____

_____

Address

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

▶ _____

Signature of licensed gun dealer

Case Number:

6 To the Respondent/Restrained Person

After the form is signed, make two copies. File the original with the court clerk. File a copy with the law enforcement agency that served you with the gun violence restraining order. Keep a copy for yourself. Failure to file a receipt with the court and with the law enforcement agency is a violation of the court's order.

For help filling out this form, read *How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?* (form GV-800-INFO).

7 a. Firearms

	Make	Model	Serial Number
a.			
b.			
c.			
d.			
e.			

☐ *Check here if you turned in, sold, or stored more firearms. Use form MC-025 and write "GV-800, Item 7a-Firearms Turned In, Sold, or Stored" for a title. Include the make, model, and serial number of each firearm.*

b. Ammunition

	Brand	Type	Amount
a.			
b.			
c.			
d.			
e.			

☐ *Check here if you turned in, sold, or stored more ammunition. Use form MC-025 and write "GV-800, Item 7b-Ammunition Turned In, Sold, or Stored" for a title. Include the brand, type, and amount of ammunition.*

c. Magazines

	Make	Model	Number of Magazines
a.			
b.			
c.			
d.			
e.			

☐ *Check here if you turned in, sold, or stored more magazines. Use form MC-025 and write "GV-800, Item 7c-Magazines Turned In, Sold, or Stored" for a title. Include make, model, and serial number of magazines.*

Case Number:

8 Do you have, own, possess, or control any other firearms, ammunition, or magazines besides the items listed in **7**? ☐ Yes ☐ No

If you answered yes, have you turned in, sold, or stored those other items? ☐ Yes ☐ No

If yes, check one of the boxes below:

a. ☐ I filed a *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (form GV-800) for those firearms with the court on (*date*): _____

b. ☐ I am filing the proof for those firearms, ammunition, or magazines along with this proof.

c. ☐ I have not yet filed the proof for the other firearms, ammunition, or magazines. *(Explain why not):*

☐ *Check here if there is not enough space below for your answer. Use form MC-025 and write "Attachment 8c" for a title.*

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

GV-800-INFO How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines?

DRAFT 04/1/19

1 What is a firearm?

A firearm includes a:

- Handgun
- Rifle
- Shotgun
- Assault weapon

What is ammunition?

Ammunition, also called ammo, includes:

- Bullets
- Shells
- Cartridges
- Clips

What is a magazine?

A magazine is an ammunition feeding device. They can be removable or fixed to the firearm.

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

- Surrender any of these items in your possession to law enforcement when they ask you to do so.
- Additionally, within 24 hours you must do one of the following:
  - Turn any other firearms, ammunition, or magazine in to your local law enforcement agency;
  - Sell them to a licensed firearms dealer; or
  - Store them with a licensed firearms dealer.

3 How do I sell or store my firearms, ammunition, and magazines?

Find a licensed firearms dealer in your area.

Use the internet to find "Firearms Dealers" in your area. Make sure the dealer is licensed.

4 How do I surrender my firearms, ammunition, and magazines 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 in my firearms, ammunition, and magazines 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, ammunition, and magazines 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 firearms?

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, ammunition, and magazines?

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

9 Questions?

Contact an attorney for legal advice. Call your local law enforcement agency, for example, your city police or county sheriff for their procedures.

(Insert local information here.)

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
1.	Giffords Law Center to Prevent Gun Violence By Julia F. Weber, JD, MSW GVRO Implementation Fellow	A	The advisory committee, staff, and Council members have done an excellent job proposing amendments to forms and the adoption of new forms to effectively implement changes in GVRO policy and procedure. They should be commended for the attention to detail and thoughtfulness in developing these forms. The following comments are offered for your consideration. New Hearing Requirement: Providing a new set of forms to allow for implementation of the new hearing requirement is necessary and appropriate, especially given that law enforcement members who request and are issued an EPO-002 (Gun Violence Emergency Protective Order) are the filing party and are expected to appear at the hearing to be automatically set by the court upon issuance of the EPO. This procedure involves taking steps that are significantly different from other civil restraining order processes. For example, in a domestic violence emergency protective order situation, a protected party, not law enforcement, would need to request that an order under the DVPA be issued to restrain the other party upon expiration of an EPO issued on EPO-001. Because this gun violence EPO and subsequent hearing process is so different from the long-standing EPO process for domestic violence, training for court staff, judicial officers, self-help center staff, and law enforcement is crucial. Currently, there are	The committees appreciate the Giffords Law Center's comments on the GVRO process and forms. The committee appreciates that there are further needs for training for the courts the potential for law enforcement and the courts to coordinate their efforts for implementation. The advisory committee will make the Center for Judicial Education and Resources (CJER) aware of the commenter's concerns.

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

	Commenter	Position	Comment	Committee Response
			reports of some confusion at the local level about where these types of orders should be filed, whether law enforcement must be taken off the street during on-duty hours to wait for the case to be called, and the role attorneys appearing with the officers play in the civil restraining order proceeding. Local courts should coordinate with law enforcement to ensure all judicial officers, including those handling matters outside of court hours, are familiar with GVROs and law enforcement procedures. All stakeholders should make sure local procedures are developed to address these issues.	
			The advisory committee should consider proposing a statewide rule of court to provide courts with guidance on all aspects of GVROs and to set out training and education requirements to ensure local familiarity with this important procedure, especially given the lethal and dangerous situations the statutory framework seeks to address.	This suggestion is outside the scope of this proposal, but the committee will consider it as time and resources permit.
			Setting a hearing date: One of the challenges with the approach proposed for setting hearing dates is that if the date setting doesn't happen until law enforcement officers file the EPO-002 form with the court, there may be delays or some EPOs will not be filed. Filing them has not been critical before with DV EPOs because those expire after just a few days and a TRO is required thereafter. However, the GV EPO is	The committee notes that not all courts have processes in place whereby they would be able to provide a hearing date when issuing an EPO-002. However, the committee added an option to include a hearing date and time on the form, or to indicate that a notice will be sent for a hearing within 21 days.

	Commenter	Position	Comment	Committee Response
			good for 21 days, a time in which a court is supposed to hold a hearing and yet may not know an EPO was issued. A more effective approach would be for the hearing date to be set with issuance of the GV EPO. Each court could inform the judges on call of the preferred weekdays and times to set. This approach is likely to save a lot of clerical work and avoid the problem of missed court dates when officers don't file. It is also increases the likelihood the restrained person will know the hearing date; the officer would also not need to be served, because he/she would know the court date before filing the EPO-002. There could be cost savings with this alternate proposal because of the extra work involved with filing, setting, and serving parties subsequent to the GV EPO. Training for staff and judicial officers is crucial. Such training could be provided minimally during a 2-3 hour session that covered EPO procedures generally and GVROs specifically, including how they are similar to and different from DVRO, Civil Harassment, Elder Abuse, and related civil restraining order processes. It is of utmost importance that these matters be handled carefully so that firearms relinquishment procedures are clear to restrained parties to minimize risk to everyone, including law enforcement and the public. The GVRO statutory framework was adopted in light of the Isla Vista tragedy; research on similar policy approaches has shown that this	See response above regarding referral to CJER.

	Commenter	Position	Comment	Committee Response
			legal remedy is effective at preventing gun violence. The courts have a critical role to play in ensuring these procedures are fully and effectively implemented.	
			EPO-002: Agree with addition of "magazines."	No response needed.
			On page 8, the front of the form should provide space for a hearing date to be provided by the magistrate at the time the GV EPO is issued. While that may not end up being the procedure statewide, the form should not dictate one approach that essentially requires waiting to set the hearing date until after law enforcement files the EPO-002 because waiting may cause delays that prevent the court from meeting the requirement in PC section 18148 that the hearing be held within 21 days . The hearing should be set upon issuance of the GV EPO, where possible. Under #3, add space for a hearing date to be provided by the duty judge so that it says "This order will expire on_____Time___. [checkbox] A hearing will be held on_____Time___or [checkbox] A hearing will be set within the next 21 days."	The form has been revised to reflect this comment. Given the tight space on this form, and the fact that the EPO-002 is produced in triplicate for law enforcement, it was important to keep the written information on one page. The spacing of the form was moved around, and one line for the address in the proof of service was eliminated to create more room to accommodate this change.
			In #5, the language regarding the hearing date should be modified to say that a hearing will be held on whether a more permanent order should be issued instead of the current language ("a more permanent gun violence restraining order may be obtained").	The committee declines to make this change. The current language is required by statute.

	Commenter	Position	Comment	Committee Response
			On page 9, the third paragraph should include the possibility that the person has been served with notice of the "within 21 days hearing" at the time the GV EPO is served. For example, "the court will hold a hearing within 21 days to determine if a longer-term order should be issued. You may receive notice with this EPO-002 and/or in the mail at the address listed on page 1 of this form."	The form has been revised in light of this suggestion.
			Making this form mandatory would be beneficial because jurisdictions are training each other and the more consistent these forms can be, the easier effective implementation will be statewide which supports the purpose of the legislation.	If this comment is about form GV-009 (about which a specific comment was requested), the response is appreciated.
			The committee should consider whether GV-009 should allow for more information about the attorney who may represent law enforcement in these matters. If local protocols are developed that, for example, have the City Attorney routinely appearing with law enforcement, it may make it easier if that office could be served simultaneously.	This suggestion will be considered in the future as GVRO procedures are developed.
			GV-020: In #4 on p. 11, add, "Please provide more information in #3 above," to ensure the party provides helpful information to the court given that no space is provided to more fully explain the denial in #4. A denial should have the same opportunity to be explained as #5.	The form has been revised according to this suggestion.

	Commenter	Position	Comment	Committee Response
			In #6, reword the first sentence to become two sentences for clarity and make additional changes for accuracy and consistency: "A Gun Violence Emergency Protective Order (Form EPO-002) was issued. You cannot own or possess any guns, other firearms, ammunition or magazines. You must surrender any of these items in your immediate possession to law enforcement when they ask you to and/or you must also sell to or store with a licensed gun dealer, or turn in to a law enforcement agency any other guns, firearms, ammunition or magazines you own or have in your possession within 24 hours of being served with a signed Form EPO-002. You must file a receipt with the court and the law enforcement agency within 48 hours of being served with this order. You may use Form GV-800, Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored for the receipt."	The form has been changed to reflect this suggestion.
			GV-020-INFO: Under, "What is a Gun Violence…?" add "temporarily" to the first sentence.	The committee declines to take this suggestion, in order to preserve existing clarity.
			Sometimes in this forms packet, the phrase, "guns and other firearms" is used and at other times, just guns or firearms are mentioned. The committee should consider whether consistent language could be used to cover all the items that the restrained person is required to relinquish/not purchase.	The statutory language varies in some instances and requires specific language in the forms. Where it is possible, the committee strives for consistent language.

	Commenter	Position	Comment	Committee Response
			Under "What if I don't agree…?" provide a direct link to the GVRO form rather than www.courts.ca.gov for ease of access.	A more general link is preferred at this time. The committee is concerned that the link to a web page for a specific form might change as servers are changed or forms revised, and users might be pointed to an incorrect version of the form.
			On page 14, when referencing MC-030, Declaration, consider adding that same or another direct link for ease of access.	See above.
			Does this packet of forms get produced in a way that makes it easy for law enforcement to retain a copy while providing another one to the restrained party at the scene?	Form EPO-002 is usually produced in triplicate carbon forms by local law enforcement.
			GV-800-INFO: on page 25, the illustration may be confusing given that it shows one type of gun. Consider removing it or replacing it with an image that reflects the content more effectively.	The committee considers the form effective and declines to take this suggestion at this time.
			References to the Yellow Pages may be outdated. Consider, "Use the Internet to find "Firearms Dealers" if you do not otherwise have information about local, licensed dealers."	The form has been revised to reflect this comment.
			In #2, the order is in effect when issued; as a result, would be clearer if it read: "Give them to law enforcement when he or she serves you with the order. If you are not served by law enforcement or otherwise told to hand over your firearms, ammunition, and magazines to them, you must turn those items in to a local law	The form has been revised with language that is similar to the suggested language.

	Commenter	Position	Comment	Committee Response
			enforcement agency (call the agency before going to the location); or sell them to or store them with a licensed firearms dealer." In #6, consider clearly indicating that the restrained person may not physically transfer the firearms from law enforcement to the licensed gun dealer because they are prohibited from having firearms.	 The committee considers the form clear and declines to take this suggestion.
2.	Susan Lea Attorney Los Angeles County		This is a frighteningly loose and ambiguous law showing a lack of due process in every sentence of the statutory language. 1. What are the standards involved in issuing one of these orders? Is it just a "reasonable cause" standards, and is that legally adequate and should it be better spelled out". Yes, the restraining order requires a police officer and a judge, and can this statute make it clear that a Commissioner cannot replace a judge???? 2. What are the procedures for getting back one's firearms if in 21 days there is no hearing, and can it be clear that the 21 days cannot be extended unilaterally!!!! If the 21 days expires, that ends the effect of the restraining order, right???	Thank you for your comments on the GVRO forms. The legal standards for Gun Violence Restraining Orders can be found in California Penal Code section 18100 et seq. The question of whether reasonable cause is the appropriate standard to include in the statute, and other statutory requirements, are outside the scope of this proposal, and should be more appropriately addressed with the Legislature The Penal Code provides direction on the procedure for return of firearms. The hearing date may be extended for good cause. (See Pen. Code, § 18120(c)(1).) Each restraining order expires on the date stated on the specific court order. The Emergency Protective Order lasts for 21 days, absent a

	Commenter	Position	Comment	Committee Response
				request for a continuance that is ordered by the court.
			Can it be clear that the restraining order ("RO") does not become effective without personal service of the RO??? If the RO is not personally served within the 21 days, and if the required hearing does not occur within the 21 days, then the RO needs to automatically end, cancel out, have no force and effect. When the 21 days expires, that is it. No extensions, and make that clear in the Judicial Council forms, please.	The legal standards for Gun Violence Restraining Orders and the service requirements can be found in California Penal Code Section 18100 et seq.
			3. Since the police are asking the person who is the subject of the RO to turn over all firearms before and without a court hearing, there needs to be clear procedures for getting back one's firearms should the judge at the time of the hearing dismiss the RO!!!!! The firearms need to be returned immediately and without further paperwork, waiting or the need for any more court time!!!! Let's not harm an innocent person, and let us not violate the person's legal right to own firearms.	This is addressed above.
			4. There needs to be accountability for false and bogus restraining orders filed under these penal Code sections!!!! The person filing the complaint needs to pay or be held accountable for falsity and harming another person. Thanks, Susan Lea (Cal. Bar # 83605)	This comment is outside the scope of this proposal.

	Commenter	Position	Comment	Committee Response
3.	Orange County Bar Association By Deirdre Kelly, President	AM	Specific Comments: **Does the Proposal appropriately address the stated purpose?** Yes. **Form GV-009 Notice of Court Hearing, is proposed as an optional form because there are many courts that have a case management system that can generate this notice. Should Form GV-009 be mandatory or optional?** Since Penal Code section 18165 requires the court to initiate the hearing, the courts are in a better position to answer this question. **Form GV-800, Proof of Firearms, Ammunition, and Magazines Turned In, Sold or Stored, at items 7a, 7b, and 7c, includes a direction to use form MC-025 for more space to list more than five firearms, ammunition, and magazines. Would a new form, an attachment that lists each group—firearms, ammunition and magazines, and the details (for example, for firearms, a page that provides blank lines to list an entire page of firearms with their make, model and serial number) be helpful?**	 No response required. No response required.

	Commenter	Position	Comment	Committee Response
			Yes. Currently, the form allows for a person to list a maximum of five firearms, brand or types of ammunition, and brands or types of magazines. Although statistics on gun ownership can be a little slippery, a significant number of Americans may own more than five firearms. A 2017 study conducted by the Pew Research Center concluded that 29% of gun owners own more than five guns, which suggests that a modified form that allows for the memorialization of more than five firearms, ammunition or magazines would be helpful. (Pew Research Center, The Demographics of Gun Ownership In the U.S. (June 22, 2017) p. 6. [http://www.pewsocialtrends.org/2017/06/22/the-demographics-of-gun-ownership/].) **Form GV-800-INFO, How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines? Contains a list of items that are considered ammunition: bullets, cartridges, clips, shells, and "ammo." Is there anything else that should be included on this list? Should it also include a technical definition of ammunition?** The word "clip" is confusing in that a "clip" can mean a string of bullets but is most commonly used to refer to a magazine, which is listed separately. It would be helpful to include the legal definition of ammunition found in Penal Code section 16150, subdivision (a), along with	The committee considered adopting a new form but decided that the use of form MC-25 was sufficient for listing additional firearms, ammunition, and magazines. The courts and the public are familiar with the MC-25 attachment form, and the committee decided no additional form was necessary. The committee considered this issue and decided to include clip in order for the list to be more inclusive rather than less.

	Commenter	Position	Comment	Committee Response
			the lay terms included in the form. It could read: Ammunition means a loaded cartridge consisting of a primed case, propellant and with one or more projectiles and includes: • Bullets • Cartridges • Shells It might also be helpful to indicate, pursuant to subdivision (a) of Penal Code section 16150, that "ammunition does not include blanks." The Orange County Bar Association ('OCBA") sees two other issue apart from the areas addressed by the specific comments above. Question 9 on Form GV-800-INFO, directs readers to "call your local law enforcement agency" if they have any questions about their obligation to surrender firearms. However, Form EPO-002 (the emergency gun violence protective order served on the restrained person) directs the reader to "seek the advice of an attorney as to any matter connected with the order" and that "[t]he attorney should be consulted promptly so that that the attorney may assist you in any matter connected with the order." We think the EPO-002 provides the better advice and suggest deleting the reference to contacting law enforcement in Question 9 on Form GV-800-INFO and replacing it with the	The committee considered whether to include the definition of ammunition from Penal Code section 16150 (which includes propellant and excludes blanks) but decided that the definition was technical in nature and did not clarify the meaning of ammunition for the purposes of the information sheet. The committee considered this change and incorporated changes that directed readers to call an attorney for legal advice and to call law enforcement for information on their procedures.

	Commenter	Position	Comment	Committee Response
			language indicating the reader should contact an attorney for legal advice. Paragraph 2 to Form EPO-002 (Gun Violence Emergency Protective Order), reads in part, "YOU MUST NOT own possess, purchase, receive, or attempt to receive any firearms, ammunition, or magazines (any ammunition feeding devices." The proposed amendment to that form only adds the italized language and is entirely appropriate as it conforms with the changes in law brought about by SB 1200. However, the use of the word "own" in the existing version of the form is confusing. The language tracks the required contents of the order articulated in Penal Code sections 18135, subdivision (a)(4), and 18160, subdivision (a)(5). It is confusing because even though these Penal Code sections require the order to tell the restrained party that they may not "own" a firearm, the statutory scheme allows a restrained person to comply with the order by surrendering their firearms to law enforcement or a licensed gun dealer for the period the order is in effect while maintaining an ownership interest in the firearms. (See Penal Code § 18120, subd. (c)(1) & (c)(2).) Both of those subdivisions provide for the return of the firearms to the restrained party once the Gun Violence Restraining Order has lapsed. The second page of the form, under "WARNINGS AND INFORMATION" has the	As the commenter acknowledges, the solution to this issue is a legislative fix and not within the scope of this proposal.

	Commenter	Position	Comment	Committee Response
			same problem. OCBA recognizes that the only solution to this problem is a legislative fix but is raising the issue since the confusion impacts the forms promulgated by Judicial Council.	As the commenter acknowledges, the solution to this issue is a legislative fix and not within the scope of this proposal.
4.	San Diego Office of the City Attorney By Nicole R. Crosby, Chief Deputy City Attorney Domestic Violence and Sex Crimes Unit		Presently, once an emergency GVRO is filed (EP-002), and served on scene, the law enforcement officer has to file the EPO-002 with the court "as soon as practicable" under 18140. Once the EPO is filed, the court will set the hearing date and notify the respondent of the hearing time, date and location—which must be within 21 days of the order being served (PC18148). We would like the judicial officer to provide a hearing date at the time the Emergency GVRO is granted and for the form to capture that hearing date. I am happy to discuss this in more detail if you would like. I have heard that other individuals and agencies have sent you questions or comments about this too. Separately, we have concerns with the court mailing documents to the respondent. Although this method does not run afoul of the code, two other code sections specifically require personal service (Ex-parte [PC 18140] and permanent orders [PC 18197]). Typically, the EPO, like DV EPOs are personally served on the respondent at the time of the request. Currently, we are obtaining a copy of the EPO from law enforcement and filing an ex-parte order over	The committee appreciates the comments from the San Diego City Attorney's Office. The form has been modified in light of this suggestion. As the commenter acknowledges, there is no statutory mandate that the notice for the post-EPO hearing be served in person. The EPO itself must be personally served in order for the law enforcement officer to take guns away from the restrained person, and form EPO-002 will include a notice either of a hearing date or that the court will be holding a hearing within 21 days to possibly keep those guns for a longer time. Service by mail of a notice of a hearing after a

	Commenter	Position	Comment	Committee Response
			the top of the EPO, requesting the court to shorten time to keep the same hearing date, if the court has provided a date to the officer. We are then attempting service of notice of the ex-parte order and hearing on the respondent prior to the date set by the court. Our mail service worries stem from the courts history (in different regards) of not finding regular mail to be sufficient notice in various situations (think misdemeanor prosecution for civil DV order violations). In the event a respondent's rights are suspended, based on our petitions, we anticipate that a respondent can and will argue they never received the mailed notice. Without notice, the respondent had no reason to appear in court to contest the firearm prohibition at the hearing. Non appearance by a presumably served respondent would trigger a granted order. This order could then be challenged and overturned, which would then create more issues unraveling a GVRO and filing a new petition. Additionally, we have seen that address information the court has is unreliable. We see it more often in DV situations. The parties often separate after a criminal incident or the initial filing of a civil court order. This would also hold true for individuals contacted at hotels, motels, or places of business where the future respondent's home address is either not provided or outdated. Law enforcement often	court has jurisdiction over a party is generally allowable by law.

	Commenter	Position	Comment	Committee Response
			relies on DMV data to fill out reports on respondent's last known address, but we have discovered in our attempts to serve GVROs that the address on file with the DMV or a police report is also outdated. Furthermore, military members are frequently transferred to different bases, barracks or assignments as a result of a criminal incident or the filing of a GVRO.	
5.	Superior Court of California, County of Los Angeles	AM	Implementation of these legislative changes would be extremely burdensome since it would require extensive training and the creation of new systems and procedures to handle Emergency Protective Orders outside the normal case process. In particular, the setting of the GVRO hearing without a required Ex Parte Application following the EPO and requiring the court to give notice of the hearing within the 21 days of oral issuance without a timeframe by which to file the EPO for law enforcement officers. These processes would likely be extraordinarily complex and cumbersome, especially for large courts. Without the time certain for the law enforcement agency to file, the time to give notice of the hearing may be too short and may cause subsequent documents such as the receipt of firearm relinquishment to be submitted without the court having received the EPO-002.	The committee appreciates the work that is involved with implementing this statute and appreciates the comments to assist in this process. The committee recognizes that the statute is difficult to implement because it relies on timely filing from law enforcement to the court, a quick timeframe for the court to send a notice the restrained person, and a hearing within 21 days. In response to this, and other similar comments, the committee will advance a legislative proposal to require that law enforcement file the EPO-002

	Commenter	Position	Comment	Committee Response
			Further, when there is no further filing by the law enforcement agency after the EPO-002, the Court must determine whether to extend the protective order to one year without further request from the agency or any other party. The court cannot prosecute the GVRO. Only a party with standing can file a request for a hearing.	with the court as soon as practicable after issuance, but not later than within 3 court days.
			We recommend that the Judicial Council work with the Legislature on urgency clean-up legislation that would establish a time certain for filing of the EPO-002 document, and then tie the 21-day hearing to the filing of the GV-100. The process should occur in a similar manner to all other restraining orders. 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?**	See above regarding legislative proposal.
			Yes. **• Form GV-009 Notice of Court Hearing, is proposed as an optional form because there are many courts that have a case management system that can generate this notice. Should Form GV-009 Notice of Court Hearing, be mandatory or optional?**	No response needed.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
			This form should remain optional. 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.** No. **• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Implementation would be extremely burdensome since it would require extensive training and the creation of new systems and procedures to handle Emergency Protective Orders outside the normal case process. **• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** No.	No response needed. No response needed. The committee appreciates the information regarding implementation and recognizes the burden the new statute is placing on the courts.

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

	Commenter	Position	Comment	Committee Response
			Further explanation: This new process is substantially different from any existing Retraining Order processes. Implementation of these legislative changes would be extremely burdensome since it will require the creation of new systems and procedures to handle Emergency Protective Orders. In particular, setting the GVRO hearing, possibly without an application following the EPO and will be complex and cumbersome, especially for large courts. Creating a system which would allow a Judicial Officer to schedule a 21-day hearing, outside of regular business hours, in the appropriate location will require involving our court technology services and changing our case management systems. After developing these processes, we would then need time to train both court staff and many, many Judicial Officers (since night-time EPO/PCD duty is a rotating responsibility).	The committee understands the complications of implementing this statutory requirement. The description from the court regarding the difficulties in implementing this process is specific to the legislative requirements that were effective January 1, 2019. This form proposal should alleviate some of the work on the part of the trial court to provide forms and guidance to court staff, litigants, and law enforcement.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
			• How well would this proposal work in courts of different sizes? The procedure contemplated in this proposal would be extraordinarily complex and cumbersome for large courts.	The committee appreciates the information regarding implementation and the burden on large courts.
6.	Superior Court of California, County of Orange, Civil Operations By Sean E. Lillywhite Administrative Analyst/Officer, Training & Analyst Group (TAG)		Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement - W19 - 02 While the proposed forms assist in the court implementing the hearing requirement per SB 1200, there are still gaps in the legislation related to the enforcement of police officers submitting the EPO-002 that need to be addressed. The forms could also provide more clarification to law enforcement that this emergency gun violence protective order is not a search and seizure order. Furthermore, additional forms still need to be revised to implement the SB 1200 hearing requirement including the Request to Continue Hearing for Gun Violence Restraining Order and Order for Continuance and Notice of New Hearing Date. We also have specific feedback on the forms themselves:	Thank you for your comments. This suggestion requires a legislative fix that is outside the scope of the current proposal. This suggestion will be taken into consideration as these forms continue to be revised. Revisions to forms GV-115 and GV-116 are being proposed to implement continuances related to this hearing requirement and will be circulated for comment to implement in January 2020.

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

	Commenter	Position	Comment	Committee Response
			• EPO-002 o Item 7 the verbiage of firearms/ammunition "searched for" or "seized" is misleading as this EPO is not a search and seizure order. A disclaimer should be provided to law enforcement to differentiate this EPO from a search and seizure order.	Due to space constraints on the form, a disclaimer cannot be added at this time. To the extent this requires better training of law enforcement it is outside the scope of the proposal and of this committee's purview.
			o Note to law enforcement (last 2 paragraphs on page 2): More emphasis should be provided to the officer that this form needs to be submitted to the court as soon as practicable after issuance. It could be worth mentioning that a timely submission to the court is imperative to allow adequate time for the court to set the required hearing and provide notice.	The form has been modified in light of this suggestion.
			• GV-009 o Under the clerk's certificate of mailing: Capitalize the "I" in the following phrase "certify that i am not a party to this cause".	The form has been modified in light of this suggestion.
			• GV-020 o Under "Use this form…" the third bullet point refers to GV-250; however, the form number should be GV-025.	The form has been modified in light of this suggestion.
			• GV-200 o The forms listed under item 4 should include all proposed forms related to the emergency GVRO	The committee declines to make this change. The other new forms, other than form GV-030, do not require personal service and so will not be added to the form.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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	Commenter	Position	Comment	Committee Response
7. h e	Superior Court of California, County of San Diego By Michael Roddy, Chief Executive Officer	AM	**Q: Does the proposal appropriately address the stated purpose?** Yes. **Q: Form GV-009 Notice of Court Hearing, is proposed as an optional form because there are many courts that have a case management system that can generate this notice. Should Form GV-009 Notice of Court Hearing, be mandatory or optional?** The form should be optional. **Q: Form GV-800, Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored, at items 7a, 7b, and 7c, includes a direction to use form MC-025 for more space to list more than five firearms, ammunition, and magazines. Would a new form, an attachment that lists each group—firearms, ammunition and magazines, and the details (for example, for firearms, a page that provides blank lines to list an entire page of firearms with their make, model and serial number) be helpful?** Yes, an attachment listing the information required for each group would be helpful for the individual completing the form.	No response required. No response required. The committee considered adopting a new form but decided that the use of form MC-25 was sufficient for listing additional firearms, ammunition, and magazines. The courts and the public are familiar with the MC-25 attachment

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

	Commenter	Position	Comment	Committee Response
			Q: Form GV-800-INFO, How Do I Turn In, Sell, or Store My Firearms, Ammunition, and Magazines? contains a list of items that are considered ammunition: bullets, cartridges, clips, shells, and "ammo." Is there anything else that should be included on this list? Should it also include a technical definition of ammunition?	form, and the committee decided no additional form was necessary.
			The included list appears to be sufficient.	No response required.
			Q: Would the proposal provide cost savings? If so, please quantify.	
			No. Additional costs will be incurred as new forms will need to be printed and added to case managements system.	Thank you for the response.
			Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?	
			Training staff (business office and courtroom clerks), creating local packets, and updating case management system and internal procedures.	No response required.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
			Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes?	
			It appears that the proposal would work for courts of all sizes.	No response required.
			General Comments:	
			EPO-002: • This version of the form should be adopted prior to September 1st, as it contains information needed by the court to provide notice (i.e. address of the restrained party and law enforcement.). Law enforcement agencies in San Diego have agreed to include this information as of January 1st, as it allows the court to provide notice of the hearing rather than the law enforcement agency.	The committee is working within the Judicial Council cycle to allow for comments and notice of the effective date of the revisions to this form.
			GV-009: • The form listed in the clerk's certificate of mailing should list "Notice of Court Hearing."	The form has been modified in light of this suggestion.

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

	Commenter	Position	Comment	Committee Response
			GV-025: • It is unclear why item 4 lists the "Restrained Person" as an option for the individual being served. Item 4a is not optional and would provide that the restrained person is being served with a copy of his or her own Response (GV-020). Additionally, item 5 only provides fields for the server to list where copies were mailed to the law enforcement agency. Propose that "restrained party" be removed as an option, as it may cause confusion or cause the server to inadvertently check that box instead of "Requesting Agency."	The form has been modified in light of this suggestion.
8.	Superior Court of California, County of Santa Cruz By Sasha Morgan, Director of Operations	NI	We just had our first one filed, based on the EPO-002, only. When they went to court day it was continued because there is now a companion case. In filing out the GV-116, on item 5b it seems like we need check boxes so that we could mark temporary orders based on EPO-002 were granted on _____ or TRO based on GV-110. Maybe this is in the works? Continued beyond the 21 days with an agreement by the restrained person to sync up a workplace violence problem. If the RO is granted based on an EPO-002 – then we believe GV-130 Item 5 (Findings), c. should be changed. It now reads The facts as stated in the *Petition* and supporting documents. We think it should at least read	Revisions to forms GV-115 and GV-116 are being proposed in light of this suggestion and will go out for public comment in Spring 2019 with a proposed January 2020 effective date. Form GV-030 (not form GV-130) is designed to be used as the order after hearing on an EPO-002. In that form, item 5 does include the language in the comment.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
			The facts as stated in the EPO-OO2 or Petition and supporting documents. It would be great to hear more about what to do if we get another call where the Police say they do not want to proceed. Was it correct to ask them to file a dismissal or should we have said you have to go to your court date? Also one other think that is a typo – on the JC Forms site if you bring up the GV-130, look at page two footer, there are works on time of the footer third line – Firearms Restraining Order – easy fix. I know you have my EPO-002 comments: Add address and name for Police and Restrained Party.	Law enforcement can notify the court if they do not wish to proceed on a hearing after the EPO-002, however, the court is still required by statute to hold a hearing. Thank you for noting this; the form GV-130 on the website will be corrected. This is included in the revised EPO-002.
9.	Superior Court of California, County of Ventura By Brenda McCormick, DEO & General Counsel	AM	1. In addition to the proof of service section on the bottom of the EPO-002, a separate proof of personal service form is necessary because some law enforcement agencies serve and file the Proof of service after EPO-002 has been filed with the court– either create a new form for proof of personal service of the EPO-002, or revise the GV-200 Proof of Personal Service to include the EPO-002 in Section 4.	Form GV-200 has been modified in light of this suggestion.

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

	Commenter	Position	Comment	Committee Response
			2. Forms to be used to request a continuance of the hearing (like the GV-115 and GV-116) are necessary – either create 2 new forms or revise the GV-115 and GV-116 – our first EPO-002 that was filed and set for hearing on 2/6/19 was continued and the court had to alter the GV-115 Order for Continuance and Notice of New Hearing Date, so that it could be filed and scanned into CCPOR for transmission to law enforcement to make all law enforcement agencies aware that the temporary emergency protective order continued in effect pending the new hearing date.	Revisions to forms GV-115 and GV-116 are being proposed in light of this suggestion, and will go out for public comment during Spring 2019.
			3. The GV-020 has a typo in the first paragraph, bullet number 3 that states at the end (Use Form GV-250, Proof of Service by Mail) – this refers to the existing form and a new proof of service form for the service of the Response to the EPO-002 has been created GV-025.	The form has been modified in light of this comment.
			4. To make it easier and consistent for law enforcement agencies, the GV-009 Notice of Court Hearing should be a mandatory form used by all courts to make the process easier for law enforcement and to ensure that the necessary information is on the court form and the JC should add language that allows a court to generate the form from their case management system, as long as it contains all the same information as on the GV-009.	The committee considered whether this form should be mandatory but declined to recommend that. There are courts that prefer to generate notice of hearings within their case manage systems, who might be unable to do that if the form was mandatory.

W19-02

Restraining Orders: Proposed Gun Violence Restraining Orders for Senate Bill 1200 Hearing Requirement

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

	Commenter	Position	Comment	Committee Response
			5. GV-009 Notice of Court Hearing – what if the restrained party is transient and no address is provided by law enforcement on the EPO-002? How does the court provide notice to the restrained party? 6. GV-800 Proof of Firearms, Ammunition and Magazines Turned In, Sold or Stored – rather than directing a party to use the MC-025 if there is not enough space to list all firearms, etc. on page 2, a new attachment form should be created that lists each group – firearms, ammunition, etc. to ensure that the restrained party lists all the information required. 7. On EPO-002 consider including a place on the form for the officer to list the name(s) and address(es) of family members or others who want to be informed of the hearing date.	The committee notes that the statute does not make any provision for this. Mail to the last known address provided by law enforcement officer on the EPO-002 is the only address that may be available to the court. The committee considered adopting a new form but decided that the use of form MC-25 was sufficient for listing additional firearms, ammunition, and magazines. The courts and the public are familiar with the MC-25 attachment form, and the committee decided no additional form was necessary. The committee considered this option, but declined to include it because the court is not authorized to serve nonparties and because of privacy concerns over including information of nonparties on a protective order.
10.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	AM	The JRS notes that new processes and procedures must be put into place to handle unfiled EPOs as though they were filed documents. The JRS notes the following impact to court operations: • Significant fiscal impact • Results in additional training, which requires the commitment of staff time and court resources. • Increases staff workload	The committee appreciates the work that goes into implementing new processes and standards for this legislative change.

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

	Commenter	Position	Comment	Committee Response
			• Impact on local or statewide justice partners Implementation of these legislative changes would be extremely burdensome since it would require extensive training and the creation of new systems and procedures to handle Emergency Protective Orders outside the normal case process. In particular, the setting of the GVRO hearing without a required Ex Parte Application following the EPO, and requiring the court to give notice of the hearing within the 21 days of oral issuance without a timeframe by which to file the EPO for law enforcement officers, would likely be extraordinarily complex and cumbersome, especially for large courts. New processes and procedures must be put into place to handle unfiled EPOs as though they were filed documents. Whatever the costs, it is likely that the informal process created by this legislation and by the use of these forms will be prone to error – in an area of litigation that is crucial to public safety. A more formal and reliable process is required and a statutory change may be required to achieve it. JRS recommends that the Judicial Council work with the Legislature on urgency clean-up legislation that would establish a time certain	The committee agrees that courts will need to develop new processes. The change made to form EPO-002, to make space for court endorsement, is designed to facilitate the filing of the EPO, to start a more formal process. In response to this, and other similar comments, the committee will advance a legislative proposal to require that law enforcement file the EPO-002 with the court as soon as practicable after issuance, but not later than within 3 court days.

	Commenter	Position	Comment	Committee Response
			for filing of the EPO-002 document, and then tie the 21-day hearing to the filing of the EPO-002.	

Item number: 18

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Notification of Military Service: Revise form MIL-100

Committee or other entity submitting the proposal:
Collaborative Justice Advisory Committee

Staff contact (name, phone and e-mail):
Jenie Chang, 415-865-4268, jenie.chang@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Item #1
From the Collaborative Justice Courts Advisory Committee annual agenda approved by the Executive and Planning Committee on March 13, 2019: Item #1: Amend the Notification of Military Service form to better meet the requirements of Pen Code Sec. 858, which requires judicial officers to notify defendants at arraignment that there are certain provisions of law specifically designed for individuals who have active duty or veteran status and who have been charged with a crime. Also address issues of form usability, especially in non-criminal case types, Project supports ongoing project/activity # 4 and 5

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-18

Title
Rules and Forms: Mandatory Form for Notification of a Party's Military Status

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Revise form MIL-100

Proposed Effective Date
January 1, 2020

Proposed by
Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Chair

Contact
Jenie Chang, 415-865-4268
jenie.chang@jud.ca.gov

Executive Summary and Origin

The Collaborative Justice Courts Advisory Committee proposes revising *Notification of Military Status* (form MIL-100), which informs the court that a party in a court case is or was in the military and changing the form from optional to mandatory. The revisions to the current form will enable courts to provide improved identification of court litigants in all case types who have a military affiliation.

Background

In 2012 the Administrative Office of the Courts received a letter, jointly authored by members of the judicial and legal communities, requesting amendment of all mandatory Judicial Council forms to include information about whether a party is a veteran of any branch of the U.S. armed forces. The request was rooted in the belief that providing the court with this information would allow it to better administer justice and better enable attorneys to represent the interests of their clients. The committee considered this request but determined that revising numerous forms, some of which have limited space, would create a workload burden on courts at that challenging fiscal time. The MIL-100 form was adopted in 2014 to address this request.

Senate Bill 1110 (Stats. 2014, ch. 655) amended Penal Code section 858, effective January 1, 2015, to direct the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code section 1170.9 and related statutes and to include a space for the local court to provide contact

information for the county veterans service office. Revisions to the form incorporating these changes went into effect July 1, 2015.

The Proposal

This proposal revises the current form MIL-100 to better inform users of the broad applicability of the form, including in noncriminal cases, while retaining all required notifications and information for parties in criminal cases. The revisions aim to employ user-friendly language and a simpler format for parties to identify as currently or formerly serving in the armed forces and provide relevant information to the court.

While the military or veteran status of a party may be relevant in many different kinds of court cases, the current form MIL-100 has the appearance of being primarily applicable in criminal cases. This is because the information on the form is predominantly directed at parties in criminal proceedings following revisions intended to be responsive to the requirements of Penal Code sections 858 and 1170.9. There are no other Judicial Council forms that can be used to notify the court of a party's military status in any case type.

Form MIL-100 is intended for use in all case types to notify a court of a party's military status. Given the relevance of military status in many cases beyond criminal, this form seeks to inform all courts, not only criminal courts. For example, use of the form in family law cases could alert the court or the court-appointed child custody mediator or evaluator that a party may be eligible for services provided by the military or that visitation schedules may need to consider active duty responsibilities. Since the form is intended to cover family law and civil case types, a sentence has been added to the notice box cautioning that litigants filing for relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043) must still complete the applicable military or family law forms

The committee proposes revisions to form MIL-100 as follows:

- Add "Veteran" to the title of the form.
- Replace "Attorney or Party Without Attorney" with "Person Completing This Form."
- Add "State Bar Number (if applicable)."
- Move the "Consult your attorney …" and "You may decline …" statements to page 2, consolidating all information and notices on a single page.
- Replace item 1 "I…Declare as follows" with "This form is about (name) who is a party in a."
- Add "criminal," "family," "juvenile," "civil," and "other" case types as check box options in item 1.
- Replace "I am currently a member of" in item 2 with "The person this form is about is:" to accommodate different users of the form.
- Delete "My entry date is:" from item 2 as it is unnecessary.
- Replace "I was discharged on" in item 3 with "discharge date" and move to item 2.
- Delete "I used to serve in the state or federal armed services or reserves" in item 3.

- Add “A current member of the state or federal armed services or reserves” as a selection option to item 2.
- Add “A veteran of the state or federal armed services or reserves” as a selection option to item 2.
- Move item 4 to bottom of the page as a notice.
- Replace “I am filing this form on behalf of:” with “I am filling out this form about:” in item 5 and renumber it as item 3.
- Add “I am the attorney for the person in item 2 above, whom I am informed and believe is a current member or veteran of the state and federal armed services” as item 4.
- Move the notice and the attendant provisions from page 1 to page 2.
- Add abbreviations of medical conditions listed on page 2 (e.g., “PTSD”).
- Add to page 2 the statement “Letting the court know about your military experience may allow consideration of possible benefits and protections for your case.”

Mandatory form

The committee proposes that form MIL-100 be changed from an optional form to a mandatory form. The Collaborative Justice Courts Committee believes courts will be able to process cases more efficiently while improving the fair administration of justice through the consistent application and consideration of possible benefits and protections across all case types in which military status is relevant. Use of the form will ensure the necessary information is obtained and available for future proceedings. Moreover, Penal Code 858 requires the court to inform criminal defendants that they may request this form and file it with the court.

Alternatives Considered

The issue of inconsistent identification of the military status of parties in noncriminal cases could be left unaddressed, as it has been until now. Revisions to form MIL-100 aim to simplify the form for ease of use, as well as make clear the broad applicability of the form and the possible relevance of military status to those cases outside of criminal. The committee carefully considered possible effects of a mandatory form and concluded the interests of justice would best be served by a mandatory form.

Fiscal and Operational Impacts

This proposal is unlikely to generate significant cost or operational impacts beyond the cost for courts to reproduce paper copies of the forms. The committee does not anticipate that this proposal will result in any costs to the branch nor any requirements for implementation. There is the potential for cost savings if a court is aware at an early stage of a proceeding that a party to an action has a military affiliation, as it may reduce the chance of needing additional hearings to address this issue.

Request for Specific Comments

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

- Do the revisions to the form appropriately address the stated purpose?
- Should the form remain an optional form or should it become mandatory?
- Should the form be two separate forms, one for criminal cases, one for civil cases?
- Are any additional revisions recommended?

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) or revising processes and procedures (please describe)?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form MIL-100, at page 5

PERSON COMPLETING THIS FORM: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: STATE BAR NUMBER (IF APPLICABLE):	*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:	
NOTIFICATION OF MILITARY/VETERAN STATUS	CASE NUMBER:

1. This form is about *(name):* who is a party in a
   ☐ criminal ☐ family ☐ juvenile ☐ civil ☐ other *(specify):* court case.

2. The person this form is about is:
   ☐ A current member of the state or federal armed services or reserves.
   ☐ A veteran of the state or federal armed services or reserves.
   Discharge Date:

3. ☐ I am not a party to this case. I am filing out this form about: a party to the above entitled case.

4. ☐ I am an attorney in the above entitled case. I am informed and believe the person in item 1 is a current member or veteran of the state or federal armed services.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Notice

If this form is being submitted in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.

Local County Veterans
Services Office Information
(to be provided by local court):

Form Adopted for Mandatory Use
Judicial Council of California
MIL-100 [Revised January 1, 2020]

Penal Code, §§ 858, 1001.80, 1170.9, 1170.91
50 U.S.C. §§ 3901–4043
www.courts.ca.gov

YOU SHOULD CONSULT WITH YOUR ATTORNEY ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of any branch of the U.S. Military, you may be entitled to certain rights under the law. Filling out the MIL-100 form is a way you can let the court know about your military status. Letting the court know about your military experience may allow consideration of possible benefits and protections for your case.

If you are a party to a civil or non-criminal case, you must complete the appropriate forms, which may include those listed below.

Filing of this form does not substitute for the filing of other required forms or petitions for your court case.
If you are filing:
- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043);

please see *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010) and *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

You are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

Some examples of benefits for a defendant in a criminal case who is a veteran or is on active duty include possible consideration for alternative sentencing and restorative relief, and diversion in misdemeanor cases. If you are a current or former member of any branch of the U.S. military who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), post traumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be entitled to certain rights under the following California laws:

Below is a brief description of possible rights and protections under the following California laws:

California Penal Code section 1170.9
- Treatment instead of prison or jail time for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered, and early termination of probation;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes

California Penal Code section 1001.80
- Pretrial diversion program instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program

California Penal Code section 1170.91
- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.

Item number:19

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Vacatur Relief for Human Trafficking Victims

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Implementation of Penal Code section 236.14, vacatur relief for human trafficking victims: consider whether to recommend rule or forms to implement Penal Code section 236.14, vacatur relief for human trafficking victims.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-19

Title
Criminal Procedure: Vacatur Relief for Human Trafficking Victims

Proposed Rules, Forms, Standards, or Statutes
Approve Cal. Standards of Judicial Administration, standard 4.15

Proposed by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes adding standard 4.15 to the California Standards of Judicial Administration to provide guidance to judges and court administrators on procedures to implement vacatur relief under Penal Code section 236.14. Section 236.14 provides, in relevant part, for a petition process to vacate an arrest or conviction for a nonviolent offense while the petitioner was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records.

Background

In September 2016, the Legislature enacted Senate Bill 823 (Block; Stats. 2016, ch. 650), which added Penal Code section 236.14, effective January 1, 2017, establishing a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of a nonviolent offense while he or she was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records. (SB 823 also provides for relief for a person adjudicated a ward of the juvenile court for committing a nonviolent offense while a victim of human trafficking. The Judicial Council approved *Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-748) at its September 2018 meeting.)

To obtain relief under Penal Code section 236.14, the petitioner is required to establish that he or she was a human trafficking victim at the time the nonviolent crime was committed, that the commission of the crime was a direct result of being a human trafficking victim, and that the victim is engaged in a good-faith effort to distance himself or herself from the human trafficking

scheme. (Pen. Code, § 236.14(g).) The court is authorized, on making specified findings, to expunge the arrests and to vacate the convictions. (*Ibid*.)

Prior Circulation

In the spring of 2018, the committee circulated a proposal for two new optional forms, *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407) and *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408) in response to legislation establishing a petition process under Penal Code section 236.14. The committee received eight comments in response. Two of the commenters agreed with the proposal, but the other six raised significant issues and proposed various solutions, some of which were contrary to each other. Many of the issues arose from the absence of statutory guidance on implementing procedures, including procedures for multijurisdictional petitions, and concerns about the use of potentially incriminating information in the petition by prosecuting agencies or law enforcement.

In response, the committee chair appointed a working group of subject-matter experts from the committee to review the comments and suggest options to the full committee. After a thorough review of the comments to the proposal, the working group concluded that statewide forms were limited in their ability to provide guidance on the implementation of section 236.14, and considered whether a rule of court would be more effective. The committee subsequently decided that a standard of judicial administration, a nonbinding guideline or goal recommended by the Judicial Council, was more appropriate at this time because of the absence of definitive legal authority on some of the issues related to the petition process.

The Proposal

The proposal would add a new standard of judicial administration to provide guidance to courts on how to implement section 236.14. The proposed standard addresses four areas identified by the committee where further guidance would be helpful: (1) procedures for petitions to vacate multiple arrests and convictions that occurred in the same county; (2) confidentiality of the petition, related filings, court records, and confidentiality of the petitioner's identity at the hearing or any other proceeding accessible to the public; (3) implementation of an initial court review period; and (4) additional relief for the petitioner, such as sealing of court records.

Alternatives Considered

As noted, the committee circulated a proposal for optional forms in 2018; it also considered proposing a rule of court. However, absent definitive legal authority, the committee decided that a standard of judicial administration, a nonbinding guideline or goal recommended by the Judicial Council, was more appropriate at this time.

The committee considered alternatives in response to section 236.14(e), which states "[t]he court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions." The committee concluded that it would be extremely difficult operationally for one petition to include multiple arrests and convictions from different jurisdictions because of

the challenges in accurately notifying, tracking, filing, and recording the order in each court's files and case management systems, given that the types of convictions and decision on vacatur relief in each case may differ. Additionally, the committee was not certain that the authority for consolidation in section 236.14(e) was sufficient, on its own, to transfer jurisdiction of an offense that was adjudicated in one county to the superior court in another county for dismissal, merely on the agreement of the involved parties.

In other contexts, if a party seeks to transfer a case to another superior court, a number of procedural steps are required, usually starting with a noticed motion filed in the originating court by the party requesting transfer, with the originating court ruling on the request. These steps are required for intercounty probation transfers under Penal Code section 1203.9 and its related rule of court, California Rules of Court, rule 4.530; for changes of venue under rule 4.151; and in the civil context, under Code of Civil Procedure section 403 and its related rule of court, rule 3.500, Transfer and consolidation of noncomplex common-issue actions filed in different courts. For these reasons, the committee decided not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties.

The committee discussed how the parties should be notified of the court's decisions to grant or deny a request to consolidate, grant relief without a hearing, set a hearing date, or deny the petition, after the 45-day review period provided in standard 4.15(c). The committee discussed whether petitioner's counsel should notify the local and state prosecutorial agencies or, if petitioner was self-represented, whether the court should do so. The committee concluded that the court was generally in the best position to notify the parties of these decisions.

The committee also discussed how best to implement section 236.14(q), which mandates that the record of a proceeding related to a vacatur petition that is accessible by the public must not disclose the petitioner's full name. Section 3 of SB 823 further states the following:

> The Legislature finds and declares that Section 1 of this act, which adds Section 236.14 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:
>
> In order to protect the privacy of victims of human trafficking and to improve their opportunities for recovery, it is necessary that this act limit the public's right of access to the full name of a petitioner who seeks relief from an arrest or conviction for an offense in which the petitioner participated as a result of his or her status as a victim of human trafficking.

(Sen. Bill No. 823 (2015–2016 Reg. Sess.) § 3.)

Taking this statutory language and legislative intent into account, the standard recommends that the court implement privacy measures at the hearing or other public proceedings, such as ordering the identity of the petitioner to be either "Jane Doe" or "John Doe," similar to provisions for victims of designated sex offenses under Penal Code section 293.5.

Additionally, the committee discussed options regarding a petitioner's privacy in court records, including having the petition filed using initials or "Jane Doe" or "John Doe," having the court redact the name of the petitioner, or having the court order the file sealed once the petition is filed. But the committee was concerned that each of these approaches would still allow a level of public disclosure in court records, and would place a significant burden on the petitioner and the courts. Ultimately, the committee concluded that the most effective approach was for the petition, related filings, and court records to be designated as confidential. With this approach, the petition would be confidential upon filing and immediately placed in the confidential portion of the court's file together with any supporting documentation, responsive pleadings, and so on.

The committee considered, but declined, including instructions in the standard to guide petitioners on how to file for relief, noting that standards of judicial administration are not intended to provide petitioners with such guidance.

Fiscal and Operational Impacts

The proposed standard is nonbinding. It is intended to provide guidance to courts on procedures to implement Penal Code section 236.14. If implemented by a court, expected costs are limited to training and possible case management system updates. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Please comment on the committee's decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.

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

- Would the proposal provide cost savings? If so, please quantify.
- 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. Stds. Jud. Admin., std. 4.15, at pages 6–8
2. Link A: Pen. Code, § 236.14, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=236.14*

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

Standard 4.15. Vacatur relief under Penal Code section 236.14.

(a) Request to consolidate arrests and convictions that occurred in the same county

(1) The court should allow the filing of a single petition requesting vacatur relief under Penal Code section 236.14(a) for multiple arrests and convictions that occurred in the same county.

(2) The court should favor consolidating hearings under Penal Code section 236.14(e) for multiple arrests and convictions that occurred in the same county.

(3) The court may require the following documentation before granting a request to consolidate hearings:

(A) An agreement between petitioner and all the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c), to consolidate the hearings;

(B) Documentation that states whether any of the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c), intend to file an opposition to the petition; and

(C) Proof of service of the request to consolidate hearings on the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c).

(4) The court should consider the following factors when deciding whether to consolidate hearings:

(A) The common questions of fact or law, if any;

(B) The convenience of parties, witnesses, and counsel;

(C) The efficient utilization of judicial facilities and staff resources;

(D) The calendar of the courts; and

(E) The disadvantages of duplicative and inconsistent orders.

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

(b) Confidentiality

(1) The court should designate the petition and related filings and court records as confidential.

(2) At the hearing or any other proceeding accessible to the public, the court should consider implementing procedures consistent with section 236.14(q), such as ordering the identity of the petitioner to be either "Jane Doe" or "John Doe."

(c) Initial court review and orders

(1) After 45 days from the filing of the petition, the court should conduct an initial review of the case. Concurrent with granting or denying a request to consolidate hearings, the court should:

(A) Grant relief without a hearing when the prosecuting agency files no opposition within 45 days from the date of service and the court finds that the petitioner meets the requirements for relief;

(B) Set a hearing date if an opposition is filed or is otherwise warranted; or

(C) Deny the petition without prejudice if petitioner fails to provide the information required by Penal Code section 236.14(b).

(3) The court must timely notify the petitioner and prosecuting agency of its decisions under subdivisions (c)(1) and (2).

(d) Additional relief

When granting the petition for vacatur relief under Penal Code section 236.14(a), the court should consider ordering the following additional relief, including the:

(1) Sealing or destruction of probation or other post-conviction supervision agency records related to the conviction;

(2) Expungement of DNA profiles and destruction of DNA samples, if they qualify under Penal Code section 299;

(3) Recall or return of court fines and fees, if paid; and

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

(4) Sealing of the court file, if warranted under the factors in rule 2.550(d).

Item number:20

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Immigration Consequences Explanation on Plea Forms
Revise forms CR-101 and CR-102

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Amy Kimpel, (415) 865-7995, amy.kimpel@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Review the immigration consequences language in CR-101 (felony plea form) and CR-102 (misdemeanor domestic violence plea form) and propose appropriate amendments for the council's consideration.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
There is another CLAC proposal about changing the language in the interpreter's statement which also deals with these forms (along with others).

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-20

Title
Criminal Procedure: Immigration Consequences Explanation on Plea Forms

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Revise forms CR-101 and CR-102

Proposed Effective Date
January 1, 2020

Proposed by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact
Amy Kimpel, 415-865-7995
Amy.Kimpel@jud.ca.gov
Sarah Fleischer-Ihn, 415-865-7702,
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends amending the language in the immigration consequences sections of the two Judicial Council plea forms, *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) and *Domestic Violence Plea Form With Waiver of Rights* (form CR-102), to conform to the plain language of Penal Code section 1016.5.[1] The Immigrant Legal Resource Center (ILRC)[2] suggested this change based on concerns that the current language in these forms contains inaccuracies.

Background

California law requires that:

> Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:

[1] Unless otherwise stated, all statutory references are to the Penal Code.

[2] According to its website, the ILRC is a national nonprofit that works with immigrants, community organizations, legal professionals, and policy makers to build a democratic society that values diversity and the rights of all people.

> If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation,[3] exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(Pen. Code, § 1016.5(a).)

The Judicial Council developed form CR-101, effective January 1, 2007, to provide increased uniformity in felony plea waiver forms used throughout the state. The language from the original form has never been changed:

> I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate[4] may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense.

(Form CR-101, item (3)(i), at p. 4, original emphasis.)

In 2011, the Judicial Council introduced form CR-102 to similarly provide uniformity in misdemeanor domestic violence plea waiver forms. The original form CR-102 included language about immigration consequences that differed from the language in form CR-101. This language has not changed since the form's approval in July 2011.

Recently, the ILRC proposed modifying the language in the immigration consequences section of these plea forms to conform to the language in section 1016.5 to avoid perceived inaccuracies in the advisements. Immigration law is complex, and the consequences of crimes turn on many case-specific details, including the precise wording of a statute, the immigration benefit being pursued, the sentence imposed, and the person's immigration status. Accordingly, it is inaccurate to state that certain broad classes of state offenses will always lead to certain immigration consequences. For example, a "controlled substance offense" may not trigger any immigration consequences, depending on the specific offense or the language used in the plea colloquy. (See *Matter of Paulus* (BIA 1965) 11 I&N Dec. 274; see also *Lorenzo v. Sessions* (9th Cir. 2018) 902 F.3d 930, 934–40.) Similarly, a "crime involving moral turpitude" may have no immigration consequences whatsoever, depending on many case-specific details like when the person was

[3] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created unified "removal" proceedings in place of deportation and exclusion proceedings. (See *Vartelas v. Holder* (2012) 566 U.S. 257, 261.) Because Penal Code section 1016.5 was enacted before this change, it uses the earlier terminology. To conform with the Penal Code, this memorandum and the proposed forms use the older terms of "deportation" and "exclusion."

[4] According to ILRC, "[t]o our knowledge, neither courts, prosecutors, nor defense counsel regularly inform foreign consulates of offenses committed by individuals within the United States. To advise that this practice exists could create unnecessary anxiety among immigrant defendants."

first lawfully admitted to the United States, when the offense occurred, and the potential sentence or actual sentence imposed. (See 8 U.S.C. §§ 1182(a)(2)(A), 1227(a)(2)(A)(i).)

Even those offenses described in form CR-101 that might, in some instances, make someone deportable would not foreclose eligibility for relief from deportation. For example, convictions for crimes that are aggravated felonies (which may include certain California misdemeanors), will not foreclose all forms of immigration relief when a person shows that deportation will lead to torture in the country of origin. (See 8 C.F.R. §§ 208.16–208.18.) Finally, the offense categories listed in form CR-101 are derived from federal definitions of classes of offenses and bear little to no relation to the terms as commonly used in California law.

Contrary to section 1016.5, forms CR-101 and CR-102 inaccurately suggest that certain consequences, including deportation, "will" rather than "may" follow from certain guilty pleas. By providing inaccurate information, these forms may discourage defendants from pleading to immigration-neutral offenses and create potential conflicts between accurate advice given by defense counsel and the inaccurate advisal language in the plea form.

The Proposal

The proposed change would replace the immigration advisement in the optional *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) and optional *Domestic Violence Plea Form With Waiver of Rights* (form CR-102) with the following language, derived from section 1016.5:

> I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

Alternatives Considered

The committee also considered amending the attorney's declaration section of these plea forms to include language indicating that the attorney advised the defendant of the "immigration consequences" of the plea. However, the committee ultimately decided against making this change at this time, in part because the current form includes a declaration that the attorney advised the defendant of consequences of the plea, which would include immigration consequences. In addition, the committee was concerned that adding "immigration consequences" to the attorney's declaration would not indicate the accuracy or thoroughness of such advice and therefore was of limited value in assessing the defendant's plea.

Fiscal and Operational Impacts

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

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Does the language conform to the statute and remove inaccuracies? If not, what language would do so?
- Does the language sufficiently parallel the rest of the plea form stylistically?
- Should the attorney's declaration on both forms be updated to include language about immigration consequences specifically? If so, what language should be included?

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), or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms CR-101 and CR-102, at pages 5–14
2. Link A, Pen. Code, § 1016.5, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1016.5.&lawCode=PEN*
3. Link B, Pen. Code, § 1016.3, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1016.3.&lawCode=PEN*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.
(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. INITIALS ☐

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
				AGGREGATE MAXIMUM TIME OF IMPRISONMENT			

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS ☐
(1) ☐ years and: months or
(2) ☐ Not less than: years and: months and/or not more than: years and: months.
(3) ☐ Other *(specify):*

b. **Probation** for: years under conditions to be set by the court, including INITIALS ☐
☐ days in the **county jail** or
☐ up to: days in the **county jail.**

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

Form Approved for Optional Use
Judicial Council of California
CR-101 [Rev. January 1, 2020]

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** years and: days in the county jail and: years and: days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence. ☐

d. **Narcotics Addiction Confinement** ☐
I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea**
(1) ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order. ☐
(2) ☐ I understand that I am not eligible for probation.
(3) ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. **Restitution, Statutory Fees, and Assessments** ☐
I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing

(1) ☐ $ **to the Victim Restitution Fund**
(2) ☐ $ **restitution to actual victims**
(3) ☐ $ **restitution to the State of California, Victims of Crime Fund**
(4) ☐ $ **court operations assessment**
(5) ☐ $ **court facilities assessment**
(6) ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
(7) ☐ $ **other** *(specify):*
(8) ☐ $ **other** *(specify):*
(9) ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine** ☐
I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts** ☐
I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea. ☐

i. **Other Terms (*specify):*** ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

3. **CONSEQUENCES OF MY PLEA** INITIALS

a. **No Contest ("Nolo Contendere") Plea** ☐
I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. **Parole and Postrelease Community Supervision** ☐
I understand that if I am sentenced to **state prison** or a **narcotics treatment facility**
(1) I will be placed on parole or postrelease community supervision for up to: years after my release.
(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of: years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases** ☐
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration** ☐
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender
(2) ☐ a gang member
(3) ☐ a narcotics offender
(4) ☐ a sex offender **(this registration is a lifelong requirement)**
(5) ☐ other (*specify*):

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples** ☐
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony** ☐
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my convicion in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count: is such an offense.

g. **Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)** ☐
I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture** ☐
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

3. i. **Immigration Consequences** INITIALS
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. ☐

j. **Firearms** ☐
I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.

k. **Other Consequences** (*specify*): ☐

4. **RIGHT TO AN ATTORNEY** ☐
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

I hereby give up my right to be represented by an attorney. ☐

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial** ☐
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection.

b. **Right to a Court Trial** ☐
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses** ☐
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself** ☐
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense** ☐
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney** ☐

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;
(2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
(3) Any defenses that I may have;
(4) My constitutional and statutory rights and waiver of those rights;
(5) The consequences of this plea, including the immigration consequences; and
(6) Anything else I think is important to my case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

6. b. **Questions**
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form. ☐

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me. ☐

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: ☐

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.) ☐

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial. ☐

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS**
I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea. ☐

9. **THE PLEA**
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2). ☐

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:** ☐

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other *(specify):*
(g) ☐ (Specify facts):

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender**
I understand that the court is allowing me to surrender at a later date to begin serving time in custody. ☐

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court**
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me. ☐

c. **Sentencing Date**
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date. ☐

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

DEFENDANT'S SIGNATURE _____ DATE _____

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other (*specify*): (*People v. West* (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE _____ DATE _____

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents of the form and then initialed and signed the form.

Language: ☐ Spanish ☐ Other (*specify*):

INTERPRETER'S SIGNATURE _____ DATE _____

INTERPRETER'S NAME (TYPE OR PRINT) _____

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

ATTORNEY'S SIGNATURE _____ DATE _____

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

JUDGE'S SIGNATURE _____ DATE _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS (Misdemeanor)	CASE NUMBER:

Instructions:

- *Fill out this form only if you want to plead guilty or no contest.*
- *Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.*
- *Sign and date the form under "DEFENDANT'S STATEMENT" on page 3.*
- *Keep in mind that the court cannot give legal advice. If you have an attorney and have questions about anything in this form, ask your attorney.*

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below. ☐

COUNT	CHARGES (SECTION & DESCRIPTION)		MAXIMUM PENALTY (FINE & JAIL)	

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s): ☐

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s): ☐

4. **Right to an Attorney** *(Leave this box blank if you have an attorney).* I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. **I hereby give up my right to be represented by an attorney.** ☐

5. **Other Constitutional Rights.** I understand that I am entitled to each of the following rights concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

   a. **Right to a jury trial.** I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty. ☐

   b. **Right to confront and cross-examine witnesses.** I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court to testify under oath in my presence and I or my attorney may question them. ☐

   c. **Right to remain silent and not incriminate myself.** I understand that I have the right to remain silent and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself and I cannot be forced to testify. ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

6. **Rights for Probation Violations** *(Leave this box blank if you are not charged with a probation violation).* I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge. ☐

7. **Consequences of My Plea**
   a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony. ☐
   b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment. ☐
   c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097): ☐
      (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
      (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
      (3) Booking within one week of sentencing if I have not already been booked;
      (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
      (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
      (6) Community service;
      (7) Restitution to the victim (if applicable);
      (8) An order to not own, possess, purchase, or receive any firearms;
      (9) An order to relinquish any firearms in my possession or control; and
      (10) Other:
   d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1. ☐
   e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. ☐
   f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections 29805 and 30305. ☐
   g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044. ☐
   h. **Other consequences** *(specify):* ☐

8. **Before the Plea**
   a. **Discussion with my attorney** *(Leave this box blank if you are not represented by an attorney).* Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case. ☐
   b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form. ☐

9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea. ☐

10. **The Plea** *(check one).* I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me. ☐
12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3. ☐
13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time. ☐

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

_____ _____
Defendant's Signature **Date**

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea.

_____ _____
Attorney's Signature **Date**

INTERPRETER'S STATEMENT

I: , having been duly sworn or having a written oath on file, certify that I truly interpreted this form to the defendant in the language noted below. The defendant stated that he or she understood the contents on the form and then initialed and signed the form.

Language: ☐ Spanish ☐ Other *(specify):*

_____ _____
Interpreter's Signature **Date**

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

_____ _____
Signature of the Court **Date**

Item number: 21

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Interpreter's Statements on Judicial Council Criminal Forms

Committee or other entity submitting the proposal:
CLAC

Staff contact (name, phone and e-mail): Eve Hershcopf, 5-7961, eve.hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Oct. 19, 2018
Project description from annual agenda: Review the interpreter's statement in CR-101 (felony plea form) and CR-102 (misdemeanor domestic violence plea form) and propose appropriate amendments for the council's consideration.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
In addition to forms CR-101 and CR-102, the committee is recommending similar revisions to the interpreter's statement on form CR-115 and adding an interpreter's statement to CR-170.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-21

Title
Criminal Procedure: Interpreter's Statements on Judicial Council Criminal Forms

Proposed Rules, Forms, Standards, or Statutes
Revise forms CR-101, CR-102, CR-115, and CR-170

Proposed by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

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

Executive Summary and Origin

The Criminal Law Advisory Committee recommends removing a portion of the Interpreter's Statement on three Judicial Council criminal forms to ensure that the statement accurately describes the role and responsibilities of interpreters. The committee also recommends adding the proposed Interpreter's Statement to the form used by mentally disordered defendants to indicate whether the defendant is challenging the Penal Code section 1606 report recommending confinement or continued outpatient treatment, or is waiving that right.

Background

The Judicial Council approved form CR-101, first effective on January 1, 2007, to provide increased uniformity in felony plea waiver forms used throughout the state. Form CR-101 includes an Interpreter's Statement section on the final page, which is designed to be signed by the person who interpreted the form to the defendant. The statement currently reads:

> I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents of the form and then initialed and signed the form.

Form CR-102, first effective on July 1, 2011, and form CR-115, first effective on January 1, 2003, each have a nearly identical statement. The statement was included on forms CR-101, CR-

102, and CR-115 without any explanation or comment when each of the forms was first adopted and those statements have not been revised in the intervening years.

The Proposal

The Interpreter's Statement on the following three Judicial Council forms would be revised to remove a portion of the statement that requires the interpreter to certify to the defendant's actions rather than to the interpreter's own actions to ensure that the statement is consistent with the limited role and responsibilities of the interpreter: *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101), *Domestic Violence Plea Form with Waiver of Rights (Misdemeanor)* (form CR-102),[1] and *Defendant's Statement of Assets* (form CR-115).

The Criminal Law Advisory Committee, in response to concerns raised by a certified court interpreter, considered whether to recommend removing the second sentence of the Interpreter's Statement ("The defendant stated that he or she understood the contents of the form and then initialed and signed the form") from the forms on which it currently appears. The committee considered the following reasons why it may be inappropriate to include this portion of the statement on the forms:

- ***Exceeds the role of the interpreter:*** The oath of the certified or registered court interpreter limits the interpreter's role to translating or interpreting statements, proceedings, or forms from and into English and a second language. The interpreter is neither authorized nor qualified to speak for the defendant; only the defendant's attorney is authorized to speak on the defendant's behalf.
- ***May violate the interpreter's code of ethics and is a breach of confidentiality:*** The translation of a waiver form is an extension of an attorney-client conference. The defendant's attorney explains the contents of the form and answers any questions the defendant may have. If, by signing the current Interpreter's Statement, the interpreter certifies what the defendant "stated," the interpreter may be in violation of the interpreter's code of ethics by disclosing privileged information.
- ***Requires an inquiry and assessment that the interpreter is not qualified to make:*** An interpreter cannot independently inquire and determine whether the defendant understood the contents of the form. At the time of sentencing, the bench officer asks the defendant directly and on the record whether he or she understood the contents of the form. The defendant—not the interpreter—answers the question. The interpreter solely interprets the responses of the defendant.
- ***Requires information that the interpreter may not have:*** An interpreter may not know whether a person other than the defendant, such as the defendant's attorney or a family member, initialed or signed the form on the defendant's behalf.

[1] The Criminal Law Advisory Committee is also circulating an Invitation to Comment recommending revisions to the immigration consequences provisions on forms CR-101 and CR-102 to conform with the plain language of Penal Code section 1016.5.

- ***Is unnecessarily duplicative:*** The Interpreter's Statement appears to be unnecessarily duplicative of the Defendant's Statement and the Court's Findings and Order included on forms CR-101 and CR-102.

Retaining the Interpreter's Statement in its current form may place court interpreters in an untenable position by requiring interpreters, in signing the statement to certify to knowledge that may exceed their role, to violate their code of ethics by revealing information that may be privileged or constitute a breach of confidentiality, and may require an assessment that the interpreter is not qualified to make; alternatively, some interpreters may refuse to sign the statement to avoid these conflicts.

The committee recommends adding the revised version of the Interpreter's Statement to *Notification of Decision Whether to Challenge Recommendation* (form CR-170), an optional form used to confirm whether a mentally disordered defendant has elected to challenge at a jury trial the Penal Code section 1606 report recommending confinement or continued outpatient treatment, or to waive that right. The committee believes that it is appropriate to add the revised Interpreter's Statement to form CR-170 to ensure that certification by an interpreter is included on the form for instances where a defendant requires interpretation in order to understand the form's contents and make an informed decision whether to challenge the report.

The proposal would revise the forms as follows:

Forms CR-101, CR-102, and CR-115:

- Remove the second sentence from the Interpreter's Statement on page 7 of form CR-101, page 3 of form CR-102, and page 2 of form CR-115, which reads, "The defendant stated that he or she understood the contents of the form and then initialed and signed the form."

Form CR-102:

- Modify the first sentence of the Interpreter's Statement on page 3 to make the language consistent with the Interpreter's Statement on form CR-101, by replacing the word "interpreted" with the word "translated."

Form CR-115:

- Modify the first sentence of the Interpreter's Statement on page 2 to make the language consistent with the Interpreter's Statement on form CR-101, which reads, "I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below."
- Modify the Interpreter's Statement to include boxes for the interpreter to indicate the language into which he or she interpreted the form and add a line for the date the interpreter signed the statement.
- Make other nonsubstantive technical changes to format.

Form CR-170:

- Add an Interpreter's Statement identical to the proposed revised statement on forms CR-101, CR-102, and CR-115 to read:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other (specify): _____

_____ _____
Interpreter's Signature Date

_____
Interpreter's Name (Type or Print)

Alternatives Considered

The committee considered not revising the Interpreter's Statement on forms CR-101, CR-102, and CR-115 or adding an Interpreter's Statement to form CR-170 but determined that the suggestion was meritorious and that it was important not to place interpreters in a position that raised potential conflicts.

Fiscal and Operational Impacts

Expected costs include training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed revisions an effective way to address the concerns raised regarding the Interpreter's Statement?

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

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

Attachments and Links

1. Forms CR-101, CR-102, CR-115, and CR-170, at pages 6–18

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.

(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.

(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."

(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. INITIALS ☐

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
				AGGREGATE MAXIMUM TIME OF IMPRISONMENT			

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS ☐

(1) ☐ years and months or

(2) ☐ Not less than years and months and/or not more than years and months.

(3) ☐ Other *(specify):*

b. **Probation** for years under conditions to be set by the court, including: ☐

☐ days in the **county jail** or

☐ up to days in the **county jail.**

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

Form Approved for Optional Use
Judicial Council of California
CR-101 [Rev. Jan. 1, 2020]

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence. ☐

d. **Narcotics Addiction Confinement** ☐
I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea**

1. ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order. ☐
2. ☐ I understand that I am not eligible for probation.
3. ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. **Restitution, Statutory Fees, and Assessments** ☐
I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1. ☐ $ **to the Victim Restitution Fund**
2. ☐ $ **restitution to actual victims**
3. ☐ $ **restitution to the State of California, Victims of Crime Fund**
4. ☐ $ **court operations assessment**
5. ☐ $ **court facilities assessment**
6. ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
7. ☐ $ **other** *(specify):*
8. ☐ $ **other** *(specify):*
9. ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine** ☐
I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts** ☐
I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea. ☐

i. **Other Terms (*specify):*** ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

3. **CONSEQUENCES OF MY PLEA** INITIALS

a. **No Contest ("Nolo Contendere") Plea** ☐
I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. **Parole and Postrelease Community Supervision** ☐
I understand that if I am sentenced to **state prison** or a **narcotics treatment facility**
(1) I will be placed on parole or postrelease community supervision for up to years after my release.
(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases** ☐
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration** ☐
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender
(2) ☐ a gang member
(3) ☐ a narcotics offender
(4) ☐ a sex offender **(this registration is a lifelong requirement)**
(5) ☐ other (*specify*):

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples** ☐
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony** ☐
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my convicion in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. **Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)** ☐
I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture** ☐
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

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3. i. **Immigration Consequences**
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense. ☐

j. **Firearms**
I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life. ☐

k. **Other Consequences** (*specify*): ☐

4. **RIGHT TO AN ATTORNEY**
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. ☐

I hereby give up my right to be represented by an attorney. ☐

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection. ☐

b. **Right to a Court Trial**
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty. ☐

c. **Right to Confront and Cross-Examine Witnesses**
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them. ☐

d. **Right to Remain Silent and Not to Incriminate Myself**
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify. ☐

e. **Right to Produce Evidence and to Present a Defense**
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf. ☐

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney** ☐

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;
(2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
(3) Any defenses that I may have;
(4) My constitutional and statutory rights and waiver of those rights;
(5) The consequences of this plea, including the immigration consequences; and
(6) Anything else I think is important to my case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

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6. b. **Questions**
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form. ☐

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me. ☐

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: ☐

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.) ☐

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial. ☐

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS**
I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea. ☐

9. **THE PLEA**
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2). ☐

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:** ☐

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other *(specify):*
(g) ☐ (Specify facts):

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender** ☐
I understand that the court is allowing me to surrender at a later date to begin serving time in custody.

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court** ☐
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me.

c. **Sentencing Date** ☐
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

DEFENDANT'S SIGNATURE _____ DATE _____

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other (*specify*): (*People v. West* (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE _____ DATE _____

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other (*specify*):

INTERPRETER'S SIGNATURE

DATE

INTERPRETER'S NAME (TYPE OR PRINT)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

ATTORNEY'S SIGNATURE

DATE

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

JUDGE'S SIGNATURE

DATE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS (Misdemeanor)	CASE NUMBER:

Instructions:

- *Fill out this form only if you want to plead guilty or no contest.*
- *Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.*
- *Sign and date the form under "DEFENDANT'S STATEMENT" on page 3.*
- *Keep in mind that the court cannot give legal advice. If you have an attorney and have questions about anything in this form, ask your attorney.*

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below. ☐

COUNT	CHARGES (SECTION & DESCRIPTION)		MAXIMUM PENALTY (FINE & JAIL)	

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s): ☐

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s): ☐

4. **Right to an Attorney** *(Leave this box blank if you have an attorney).* I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. **I hereby give up my right to be represented by an attorney.** ☐

5. **Other Constitutional Rights.** I understand that I am entitled to each of the following rights concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

   a. **Right to a jury trial.** I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty. ☐

   b. **Right to confront and cross-examine witnesses.** I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court to testify under oath in my presence and I or my attorney may question them. ☐

   c. **Right to remain silent and not incriminate myself.** I understand that I have the right to remain silent and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself and I cannot be forced to testify. ☐

Form Approved for Optional Use
Judicial Council of California
CR-102 [Rev. Jan. 1, 2020]

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

6. **Rights for Probation Violations** *(Leave this box blank if you are not charged with a probation violation).* I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge. ☐

7. **Consequences of My Plea**
   a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony. ☐
   b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment. ☐
   c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097): ☐
      (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
      (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
      (3) Booking within one week of sentencing if I have not already been booked;
      (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
      (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
      (6) Community service;
      (7) Restitution to the victim (if applicable);
      (8) An order to not own, possess, purchase, or receive any firearms;
      (9) An order to relinquish any firearms in my possession or control; and
      (10) Other:
   d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1. ☐
   e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from admission and reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. ☐
   f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections 29805 and 30305. ☐
   g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044. ☐
   h. **Other consequences** *(specify):* ☐

8. **Before the Plea**
   a. **Discussion with my attorney** *(Leave this box blank if you are not represented by an attorney).* Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case. ☐
   b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form. ☐

9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea. ☐

10. **The Plea** *(check one).* I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me. ☐
12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3. ☐
13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time. ☐

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

_____ _____
Defendant's Signature **Date**

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea.

_____ _____
Attorney's Signature **Date**

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other *(specify):*

_____ _____
Interpreter's Signature **Date**

_____
Interpreter's Name (Type or Print)

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

_____ _____
Signature of the Court **Date**

NAME OF VICTIM ON WHOSE BEHALF RESTITUTION IS ORDERED:	*FOR COURT USE ONLY*
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by** **the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:	
DEFENDANT'S STATEMENT OF ASSETS	CASE NUMBER:

It is a misdemeanor to make any willful misstatement of material fact in completing this form (Pen. Code, § 1202.4(f)(4).)

(Attach additional sheets if the space provided below for any item is not sufficient.)

PERSONAL INFORMATION

1. a. Name:
   b. AKA:
   c. Date of birth:
   d. Social security number:
   e. Marital status:
   f. Driver license number:
   State of issuance:
   g. Home address *(incl. city/zip):*
   h. Home telephone no.:
   i. Employer's telephone no.:

EMPLOYMENT

2. What are your sources of income and occupation? *(Provide job title and name of division or office in which you work.)*

3. a. Name and address of your business or employer (*include address of your payroll or human resources department, if different*):

   b. If not employed, names and addresses of all sources of income *(specify):*

4. How often are you paid (for example, daily, weekly, biweekly, monthly)? *(specify)*:
5. What is your gross pay each pay period? $
6. What is your take-home pay each pay period? $
7. If your spouse earns any income, give the name of your spouse, the name and address of the business or employer, job title, and division or office (*specify):*

8. Other sources of income (*specify*):

CASH, BANK DEPOSITS

9. How much money do you have in cash? $
10. How much other money do you have in banks, savings and loans, credit unions, and other financial institutions either in your own name or jointly *(list):*

	Name and address of financial institution	Account number	Individual or joint?	Balance
a.				$
b.				$
c.				$

PROPERTY

11. List all automobiles, other vehicles, and boats owned in your name or jointly.

	Make and year	Value	Legal owner if different from registered owner	Amount owed
a.		$		$
b.		$		$
c.		$		$

(Continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	CASE NUMBER:

12. List all real estate owned in your name or jointly:

	Address of real estate	Fair market value	Amount owed
a.		$	$
b.		$	$

OTHER PERSONAL PROPERTY (Do not list household furniture and furnishings, appliances, or clothing.)

13. List anything of value not listed above owned in your name or jointly *(continue on attached sheet if necessary)*:

	Description	Value	Address where property is located
a.		$	
b.		$	
c.		$	

ASSETS

14. List all other assets, including stocks, bonds, mutual funds, and other securities *(specify):*

15. Is anyone holding assets for you? ☐ Yes. ☐ No. If yes, describe the assets and give the name and address of the person or entity holding each asset *(specify):*

16. Except for attorney fees in this matter and ordinary and routine household expenses, have you disposed of or transferred any assets since your arrest on this matter? ☐ Yes. ☐ No.
If yes, give the name and address of each person or entity who received any asset and describe each asset *(specify):*

DEBTS

17. Loans *(give details):*

18. Taxes *(give details):*

19. Support arrearages *(attach copies of orders and statements):*

20. Credit cards *(give creditor's name and address and the account number):*

21. Other debts *(specify):*

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other (*specify*)

INTERPRETER'S SIGNATURE DATE

INTERPRETER'S NAME (TYPE OR PRINT)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Date of birth: California Dept. of Corrections No. *(if applicable):*	CASE NUMBER:
NOTIFICATION OF DECISION WHETHER TO CHALLENGE RECOMMENDATION (Pen. Code, § 2972.1)	

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)

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other (*specify*)

INTERPRETER'S SIGNATURE | DATE

INTERPRETER'S NAME (TYPE OR PRINT)

Form Approved for Optional Use
Judicial Council of California
CR-170 [Rev. January 1, 2020]

Item number:22

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Criminal Procedure: Diversion for Incompetent Defendants and Posttrial Hearings on Competency, Amend California Rules of Court, rule 4.130

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Amy Kimpel, (415) 865-7995, amy.kimpel@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Amend California Rules of Court, rule 4.130, mental competency proceedings, to implement AB 1810 (Committee on Budget; Stats. 2018, ch. 34). Among other changes, AB 1810 authorizes a court to revisit a defendant's competency to stand trial if there is a belief that the defendant has regained competency while awaiting transfer to the Department of State Hospitals for restoration after previously being found incompetent, and also authorizes diversion for defendants found to be mentally incompetent based on eligibility criteria.

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

SPR19-22

Title
Criminal Procedure: Diversion for Incompetent Defendants and Posttrial Hearings on Competency

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 4.130

Proposed by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Amy Kimpel, 415-865-7995
Amy.Kimpel@jud.ca.gov

Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends amending rule 4.130 of the California Rules of Court relating to mental competency proceedings in criminal cases to incorporate changes due to Assembly Bill 1810 (Stats. 2018, ch. 34), a bill that significantly altered the statutory landscape for mental competency proceedings.

Background

Effective June 27, 2018, AB 1810 established mental health diversion (Pen. Code, §§ 1001.35, 1001.36) and amended the statutes for mental competency proceedings in both misdemeanor and felony cases (Pen. Code, §§ 1370, 1370.01) to allow a judge to grant diversion to a defendant who has been found incompetent to stand trial. AB 1810 also provided a mechanism for a judge to reconsider the competency of a defendant awaiting transfer to the State Hospital when presented with substantial evidence that the defendant has regained competence—essentially providing a procedural "off-ramp" on the road to the State Hospital. (Pen. Code, §§ 1370(a)(1)(G).) This proposal would update California Rules of Court, rule 4.130, which governs mental competency proceedings, to account for these changes in law.

The Proposal

Amending rule 4.130 of the California Rules of Court is urgently needed to respond to a recent change in the law. The proposed amendments add two subdivisions to the existing rule, as well as make changes to existing subdivisions.

Changes to requirements for expert reports in competency proceedings

These amendments:

- Require an expert competency report to contain an opinion as to whether the symptoms motivating the defendant's behavior would respond to treatment; and
- Facilitate consideration of diversion after a finding of incompetency.

Diversion for incompetent defendants

To address the diversion of persons eligible for commitment under Penal Code sections 1370 and 1370.01, the amendments:

- Add a subdivision to the rule to address diversion for incompetent defendants;
- Establish procedures for initiating a hearing to consider diversion after a defendant has been found incompetent, including what information to consider;
- State the maximum period of diversion after a finding that the defendant is incompetent to stand trial;
- Delineate how evidence of the finding of eligibility for diversion and treatment and progress reports relating to diversion can or cannot be used in other proceedings;
- State that a court may not condition a grant of diversion for an incompetent defendant on either:
    - The defendant's consent to diversion, either personally, or through counsel; or
    - A knowing and intelligent waiver of the defendant's statutory right to a speedy trial, either personally, or through counsel;
- Establish procedures for incompetent defendants who are terminated from diversion that:
    - Require the court to appoint a psychiatrist or psychologist to reexamine the defendant's competence to stand trial; and
    - Allow the court to refer the matter to the conservatorship investigator in certain situations.

Posttrial hearings on competency

The proposed amendments:

- Add a subdivision to the rule to address posttrial hearings on competency, both in "off-ramp" cases under Penal Code section 1370(a)(1)(G) and after a defendant has been terminated from diversion;
- Establish procedures for initiating a hearing to reconsider competency after an earlier finding of incompetency, including what evidence can trigger such reconsideration;
- Allow a court to appoint a psychiatrist or a licensed psychologist to examine the defendant and, in a report filed with the court, opine as to whether the defendant has regained competence;
- Establish procedures for a posttrial hearing on competency;
- Dictate that the presumption of competency does not apply to posttrial hearings on competency;
- Allow the court to consider any evidence, presented by any party, which is relevant to the question of the defendant's current mental competency;
- Establish the standard of proof for posttrial competency hearings as preponderance of the evidence; and
- Require that the court's findings as to the defendant's mental competency must be stated on the record and recorded in the minutes.

Alternatives Considered

The proposed rule adds language requiring an expert competency report to contain an opinion as to "whether the symptoms motivating the behavior would respond to treatment," to facilitate assessment for mental health diversion eligibility for defendants in competency proceedings and promote efficiencies by avoiding the unnecessary delay caused by requiring a report by an expert that assesses competency and a report by another expert that assesses eligibility for diversion. The committee considered keeping the requirements regarding expert reports as they were, but decided that it would be more efficient to include this requirement as it is very close to the current requirement in the rule that the report include "[a] recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency." (Cal. Rules of Court, rule 4.130(d)(2)G).) The committee discussed whether to require the expert to opine on the defendant's eligibility for mental health diversion but concluded that was both too ambiguous and potentially too burdensome.

The committee considered creating a separate rule for mental health diversion that could be cross-referenced from the rule on competency for defendants who were granted diversion after

being found incompetent. But ultimately—given the paucity of case law on mental health diversion and the statutory language favoring local discretion in implementation—the committee decided to limit itself to the task of updating the existing rule on competency proceedings. (See Pen. Code, § 1001.35(b).)

Fiscal and Operational Impacts

This proposal may require that a court-appointed expert conduct a more extensive evaluation of the defendant and provide greater detail in the expert report. Accordingly, it may result in increased costs to the courts depending on how they compensate court-appointed experts and whether their experts currently provide the information required by the rule amendments in their reports.

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?
- Do the proposed procedures for the diversion of defendants who have been found incompetent to stand trial provide adequate guidance to courts and litigants?
- Do the proposed procedures for posttrial hearings on competency provide adequate guidance to courts and litigants?

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 the changes for the contents of expert reports in competency proceedings result in a significant cost to courts? If so, please quantify.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 6–10
2. Link A: Assem. Bill 1810 (Stat. 2018, ch. 34), at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1810*
3. Link B: Pen. Code, § 1001.36, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1001.36.&lawCode=PEN*
4. Link C: Pen. Code, § 1370, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1370.&lawCode=PEN*
5. Link D: Pen. Code, § 1370.01, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1370.01.&lawCode=PEN*

Rule 4.130 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 4.130. Mental competency proceedings

(a) ***

(b) Initiation of mental competency proceedings

(1)–(2) ***

(3) In a felony case, if the judge initiates mental competency proceedings prior to the preliminary examination, counsel for the defendant or counsel for the People may request a preliminary examination as provided in Penal Code section 1368.1(a) and rule 4.131.

(c) Effect of initiating mental competency proceedings

(1) If mental competency proceedings are initiated, criminal proceedings are suspended and may not be reinstated until a trial on the competency of the defendant has been concluded and the defendant ~~either:~~ is found mentally competent at a trial conducted under Penal Code section 1369, at a hearing conducted under Penal Code section 1370(a)(1)(G), or at a hearing following a certification of restoration under Penal Code section 1372.

~~(A) Is found mentally competent; or~~

~~(B) Has his or her competency restored under Penal Code section 1372.~~

(2)–(3) ***

(d) Examination of defendant after initiation of mental competency proceedings

(1) On initiation of mental competency proceedings, the court must inquire whether the defendant, or defendant's counsel, seeks a finding of mental incompetence.

(2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:

(A) A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report;

(B) A summary of the examination conducted by the examiner on the defendant, including a summary of the defendant's mental status, a ~~current~~ diagnosis under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, if possible, of the defendant's current mental disorder or disorders, and a statement as to whether symptoms of the mental disorder or disorders which motivated the defendant's behavior would respond to mental health treatment ~~summary of the defendant's mental status~~;

(C)–(G) ***

(3) Statements made by the defendant during the examination to experts appointed under this rule, and products of any such statements, may not be used in a trial on the issue of the defendant's guilt or in a sanity trial should defendant enter a plea of not guilty by reason of insanity.

(e) ***

(f) Posttrial procedure

(1) If the defendant is found mentally competent, the court must reinstate the criminal proceedings.

(2) If the defendant is found to be mentally incompetent, the criminal proceedings remain suspended and the court must ~~follow the procedures stated in Penal Code section 1370 et seq.~~ either issue an order committing the person for restoration treatment under the provisions of the governing statute, or, in the case of a person eligible for commitment under Penal Code sections 1370 or 1370.01, may consider placing the committed person on a program of diversion.

(g) Diversion of a person eligible for commitment under section 1370 or 1370.01

(1) After the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility for restoration under section 1370(a)(1)(B)(i), the court may consider whether the defendant may benefit from diversion under Penal Code section 1001.36. The court may set a hearing to determine whether the defendant is an appropriate candidate for diversion. When determining whether to exercise its discretion to grant diversion under this section, the court may consider previous records of participation in diversion under section 1001.36.

(2) The maximum period of diversion after a finding that the defendant is incompetent to stand trial is the lesser of two years or the maximum time for restoration under Penal Code section 1370(c)(1) (for felony offenses) or 1370.01(c)(1) (for misdemeanor offenses).

(3) The court may not condition a grant of diversion for an incompetent defendant on either:

(A) The defendant's consent to diversion, either personally, or through counsel; or

(B) A knowing and intelligent waiver of the defendant's statutory right to a speedy trial, either personally, or through counsel.

(4) A finding that the defendant suffers from a mental disorder rendering him or her eligible for diversion, any progress reports concerning the defendant's treatment in diversion, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in article VI, section 28(f)(12) of the California Constitution.

(5) If, during the period of diversion, the court determines that criminal proceedings should be reinstated under Penal Code section 1001.36(d), the court must, under Penal Code section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to examine the defendant and return a report, opining as to the defendant's competence to stand trial. The expert's report must be provided to counsel for the People and to the defendant's counsel.

(A) On receipt of the evaluation report, the court must conduct an inquiry as to the defendant's current competency, under the procedures set forth in (h)(2) of this rule.

(B) If the court finds by a preponderance of the evidence that the defendant is mentally competent, the court must hold a hearing as set forth in Penal Code section 1001.36(d).

(C) If the court finds by a preponderance of the evidence that the defendant is mentally incompetent, criminal proceedings must remain suspended, and the court must order that the defendant be committed, under Penal

Code section 1370 (for felonies) or 1370.01 (for misdemeanors) and placed for restoration treatment.

(D) If the court concludes, based on substantial evidence, that the defendant is mentally incompetent and is not likely to attain competency within the time remaining before his or her maximum date for returning to court, and has reason to believe the defendant may be gravely disabled, within the meaning of Welfare and Institutions Code section 5008(h)(1), the court may, instead of issuing a commitment order under Penal Code sections 1370 or 1370.01, refer the matter to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant under Welfare and Institutions Code section 5350 et seq.

(6) If the defendant performs satisfactorily and completes diversion, the case must be dismissed under the procedures stated in Penal Code section 1001.36, and the defendant must no longer be deemed incompetent to stand trial.

(h) Posttrial hearings on competence

(1) If, at any time after the court has declared a defendant incompetent to stand trial, and counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to examine the defendant and, in an examination with the court, opine as to whether the defendant has regained competence.

(2) On receipt of the evaluation report, the court must direct the clerk to serve a copy on counsel for the People and counsel for the defendant. If, in the opinion of the appointed expert, the defendant has regained competence, the court must conduct a hearing, as if a certificate of restoration of competence had been filed under Penal Code section 1372(a)(1), except that a presumption of competency does not apply. At the hearing, the court may consider any evidence, presented by any party, which is relevant to the question of the defendant's current mental competency.

(A) At the conclusion of the hearing, if the court finds that it has been established by a preponderance of the evidence that the defendant is mentally competent, the court must reinstate criminal proceedings.

(B) At the conclusion of the hearing, if the court finds that it has not been established by a preponderance of the evidence that the defendant is mentally competent, criminal proceedings must remain suspended.

(C) The court's findings as to the defendant's mental competency must be stated on the record and recorded in the minutes.

Advisory Committee Comment

* * *

Item number:23

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Proof of Service in Record Clearing Requests
Approve forms CR-106 and CR-106-INFO

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Proof of service form: develop a proof of service form for use in criminal proceedings.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

SPR19-23

Title Criminal Procedure: Proof of Service in Record Clearing Requests	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Approve forms CR-106 and CR-106-INFO	Proposed Effective Date January 1, 2020
Proposed by Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Contact Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes a new optional form, *Proof of Service (Criminal Record Clearing)* (form CR-106) and an accompanying information sheet, *Information on How to File a Proof of Service in Criminal Record Clearing Request*s (form CR-106-INFO), for petitioners to use with requests for a court to review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedies.

Background

Legislation authorizing petitions for dismissal, sealing, or other related criminal record clearing relief has increased in recent years.[1] Most petitioners seeking these forms of relief are self-represented because these petitions are generally filed after the criminal case or inquiry has concluded. An optional proof of service form for use in these record clearing proceedings may be helpful for self-represented petitioners to meet requirements for service on the prosecuting agency and other relevant parties required by the statutes that authorize the various forms of relief (e.g., under Penal Code section 851.91(b)(1)(D), a petition to seal arrest records must be served on the law enforcement agency that arrested petitioner).

[1] For example, Pen. Code, § 236.14 (vacatur relief for human trafficking victims meeting designated factors), Pen. Code, § 851.91 (sealing of arrest and related records), Pen. Code, § 1170.22 (recall or dismissal of conviction for violation of former Pen. Code, § 647f), and Pen. Code, § 1170.91 (resentencing of current or former members of the U.S. military who may be suffering from designated conditions).

The Proposal

The proposed *Proof of Service (Criminal Record Clearing)* (form CR-106):

- Provides brief instructions, including the direction to read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-160-INFO) before using the form, and confirms that the form is to be used only for providing proof of service of requests for a record clearing remedy;
- States that the form is for proof of service by mail or personal delivery only, and directs use of *Proof of Electronic Service* (form POS-050/EFS-050) for proof of electronic service; and
- Asks for specifics about the server and methods of service.

The proposed *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO):

- Provides general information on proof of service for record clearing requests;
- States that *Proof of Service (Criminal Record Clearing)* (form CR-106) is intended for use with a record clearing request, including use with several optional Judicial Council forms, including a proposed form that is currently circulating for public comment in a separate proposal;
- States that the law generally allows the person requesting record clearing to serve the document or form, and that the server must be at least 18 years old; and
- Provides directions on how to serve an agency by mail or personal delivery, and how to file *Proof of Service (Criminal Record Clearing)* (form CR-106) with the court.

Alternatives Considered

The committee discussed whether optional form CR-106 should track the requirements outlined in Code of Civil Procedure sections 1011 and 1013a, requiring service by mail or personal delivery to be accomplished by a person over 18 who is not a party to the case, noting no equivalent sections addressing service by mail or personal delivery in the Penal Code. However, the committee confirmed that these sections of the Code of Civil Procedure are not applicable in record clearing actions, and there is no authority in the Penal Code for requiring that the server *not* be a party to the case.[2] The committee discussed whether to include proof of electronic service in the optional form but decided instead to refer users to the existing Judicial Council *Proof of Electronic Service* (form POS-050/EFS-050) for proof of electronic service.

The committee considered developing a proof of service form for broader use in criminal proceedings, but concluded that narrowing the form for use with record clearing requests would serve a more useful purpose. The committee noted that in many instances these requests are filed

[2] *People v. Glimps* (1979) 92 Cal.App.3d 315, 325, fn. 6, (section 1011, specifying methods for service, does not apply in criminal actions because the statute appears in part 2 of the Code of Civil Procedure ["Of Civil Actions"] and is not referenced in the Penal Code); see *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 731 (only those procedural provisions of the Code of Civil Procedure that expressly are made applicable to penal actions apply in criminal cases).

by self-represented petitioners, and the corresponding statutes require service on the prosecuting agency and other government agencies. The committee believed that an optional proof of service for use in these types of criminal proceedings would assist self-represented petitioners to meet statutory notification and service requirements.

Fiscal and Operational Impacts

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

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The proposed form and information sheet use the term "record clearing" to refer to dismissals, vacatur, resentencing, reduction, sealing, and other remedies intended to diminish the impact of an arrest or criminal conviction. Is another term more accurate or appropriate?
- Are the form and information sheet written in a way that would be understandable to a typical self-represented court user?
- Is it confusing to have one proof of service form for use with a variety of record clearing requests that arise from different statutes with different procedural requirements?
- Is there a need for a proof of service form for broader use in criminal proceedings, not just limited to criminal record clearing requests?
- Are there policy reasons for the server not to be a party to the action, similar to the requirements for service by mail or personal delivery in civil proceedings under Code of Civil Procedure sections 1011 and 1013a?
- Item 8 of the proposed information sheet discusses when the other parties are served and when the proof of service is filed. It suggests that in most cases, the other parties should be served after the original document or form is filed with the court, but that some courts require that the document or form be served on the other parties first, and then the original document be filed with the court along with a proof of service. The committee requests comments on thepractices and procedures of different courts.

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

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

Attachments and Links

1. Forms CR-106 and CR-106-INFO, at pages 5–8

CR-106 Proof of Service (Criminal Record Clearing)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Instructions

- Before using this form, read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO).
- This form is only for providing proof that a document or form was served (delivered) in a case requesting that a court review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedy.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, use *Proof of Electronic Service* (form POS-050/EFS-050).
- A completed form should be filed with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in the criminal case number and case name:

Case Number:

Case Name:

(1) At the time I served the document or form listed below, I was at least 18 years old.

(2) My ☐ home ☐ business address is:

_____ _____ _____ _____
Street *City* *State* *Zip*

(3) I mailed or personally delivered the following document or form *(fill in the name of the document you are serving and complete (4) or (5)):*

_____

_____

(4) Service by mail

(a) I put one copy of the document or form in an envelope addressed to each agency (and person, if applicable) listed below, sealed the envelope, and put first-class postage on the envelope.

(b) The envelope or envelopes were addressed as follows:

(1) Name of agency served (and person, if applicable):
Address on envelope:

_____ _____ _____ _____
Street *City* *State* *Zip*

(2) Name of agency served (and person, if applicable):
Address on envelope:

_____ _____ _____ _____
Street *City* *State* *Zip*

☐ *Check here if you mailed copies of the document or form to more people or agencies. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "CR-106, Item 4" on the top of the page.*

(c) I mailed the envelope or envelopes on *(date)*: from *(city)*: *(state)*:
by depositing the envelope or envelopes *(check one)*:

(1) ☐ With the U.S. Postal Service.

(2) ☐ At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

Case Number:

5 ☐ Service by Personal Delivery 

I personally gave one copy of the document or form to each of the following:

(a) Name of person and agency served:

(1) Address where you gave the document or form to this person:

_____ _____ _____ _____
Street *City* *State* *Zip*

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

(b) Name of person and agency served:

(1) Address where you gave the document or form to this person:

_____ _____ _____ _____
Street *City* *State* *Zip*

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

☐ *Check here if you gave copies of the document or form to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document or form, and the date and time you gave them the document or form. Write "CR-106, Item 5" on the top of the page.*

6 I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

_____ ▶ _____
Type or print server's name *Server signs here after serving*

CR-106-INFO Information on How to File a Proof of Service in Criminal Record Clearing Requests

1 What does this information sheet cover?

This information sheet tells you how to use and fill out *Proof of Service (Criminal Record Clearing)* (form CR-106). This information sheet does not need to be copied, served (delivered), or filed.

2 What is proof of service?

A proof of service shows the court that a document or form was served in a legal case to provide notice to the other parties in the case, as required by law. The proof of service generally describes how, where, and when a document or form was served, and who served the document. The person who served the document is required to fill out and sign the proof of service form.

3 What is record clearing?

Record clearing laws allow you to request a court to clear your criminal record by filing a "petition" or "motion" for dismissal, vacatur (or vacating) a sentence, resentencing, reduction, sealing, or other remedies.

4 Who do I need to serve when I ask a court to clear my criminal record?

Most record clearing laws say you have to let the prosecuting agency (usually the district attorney) know about the record clearing request. Sometimes you also have to let law enforcement (like the police or sheriff) or other parties know about your request. This can be done by "serving" a copy of the papers you filed with the court on the prosecuting agency or other parties. Read the record clearing law you are basing your request on carefully to see who needs to be notified of your record clearing request. Those are the parties who must be served.

5 Why do I need to file a proof of service?

Filing a proof of service shows the court that you have let the other parties know about the record clearing request by giving them a copy of the document or form you are using to make a record clearing request to the court.

6 When can I use *Proof of Service (Criminal Record Clearing)* (form CR-106)?

Proof of Service (Criminal Record Clearing) (form CR-106) is intended for use with a record clearing request that requires notification or service of the request to the prosecuting agency and other parties. This includes use with optional Judicial Council forms for record clearing:

- *Petition for Dismissal* (form CR-180), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49, and reductions under Penal Code sections 17(b) and 17(d)(2)
- *Petition for Dismissal (Military Personnel)* (form CR-183), dismissals under Penal Code section 1170.9(h), and reductions under Penal Code section 17(b)
- *Motion to Vacate Conviction or Sentence* (form CR-187), vacating convictions under Penal Code sections 1016.5 and 1473.7
- *Petition/Application for Resentencing and Dismissal* (form CR-404), resentencing and dismissal under Penal Code section 1170.22
- *Petition to Seal Arrest and Related Records* (form CR-409), sealing under Penal Code section 851.91
- *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/ MIL-412)

DRAFT
Not approved by
the Judicial Council

7 Who can serve the petition or motion?

In most cases, the law allows you (the person who is filing the record clearing request) to serve the document or form. You can also ask someone else to serve the document or form. The person who serves a document or form for record clearing and fills out the *Proof of Service (Criminal Record Clearing)* (form CR-106) must be at least 18 years old. Read the record clearing law you are basing your request on carefully to see if it sets any other requirements for who can serve the request.

8 When are the other parties served, and when do I file a proof of service?

Ask the court clerk if any local filing rules apply. In most cases, the other parties should be served *after* the original document or form is filed with the court. This is because the court may add helpful information to the document or form, such as a hearing date. When you file the document or form with the court, take the original plus at least two copies of your documents. The court will keep the original. The clerk will stamp your copies "Filed" and return them to you. Keep one copy for your records. The other parties can be served with a copy of your court-stamped document or form, and a proof of service would be filed with the court after the parties are served.

Some courts require that the document or form is first served on the other parties, and then the original document or form is filed with the court, along with a proof of service.

9 How should the petition or motion be served?

There are three main ways to serve documents: by mail, personal delivery, or electronic service. *Proof of Service (Criminal Record Clearing)* (form CR-106) can be used to prove service by mail or personal delivery. If you serve the document or form electronically, use *Proof of Electronic Service* (form POS-050/EFS-050).

If someone else is serving documents on your behalf, make sure to provide them with the name of the agency that must be served (for example, San Francisco County District Attorney), the agency's address, and a copy of the document or form.

If serving by mail, the server should put one copy of the document or form in an envelope addressed to the agency, seal the envelope, and place first-class postage on the envelope. The server should mail the document or form by depositing the envelope at a post office or mailbox, or by depositing the envelope at an office or business mail drop where the server knows mail is picked up every day by the postal service. If serving by personal delivery, the server should give the document or form to a person with the agency, and note the name of the person, as well as the address, date, and time of the service.

Once the document or form has been served on the other parties by mail or personal delivery, the server should fill out and sign the proof of service form.

10 What do I do with *Proof of Service (Criminal Record Clearing)* (form CR-106) once it is filled out?

You should file a completed proof of service with the court where you filed your document or form. Ask the court clerk if any local filing rules apply.

Item number:24

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Approve form CR-412/MIL-412 Petition for Resentencing (Military)

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Amy Kimpel, (415) 865-7995, amy.kimpel@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda:
Review enacted legislation that may have an impact on criminal court administration and propose rules and forms as may be appropriate for implementation of the legislation.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-24

Title
Criminal Procedure: Petition for Resentencing (Military)

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Approve form CR-412/MIL-412

Proposed Effective Date
January 1, 2020

Proposed by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact
Amy Kimpel, 415-865-7995
Amy.Kimpel@jud.ca.gov
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends a new optional form, *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), for petitions for resentencing under Assembly Bill 865 (Stats. 2018, ch. 523). The legislation allows veterans to benefit retroactively from the passage of Penal Code section 1170.91, which permits a judge to consider enumerated conditions (sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems) that have resulted from military service as a mitigating factor at sentencing.

Background

Effective January 1, 2019, AB 865 allows eligible military service members and veterans sentenced before January 1, 2015, to petition the court for resentencing. The number of veterans and service members who may be eligible for resentencing under AB 865 is difficult to ascertain. The California Department of Corrections and Rehabilitation (CDCR) reported that as of February 2014, 4,521 currently incarcerated inmates at CDCR were verified by the U.S. Department of Veterans Affairs as having prior military service. (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 865 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, p. 4.) Estimates are that about half of incarcerated veterans suffer from a mental health disorder. (*Ibid.*) Aside from the state prison population, eligible petitioners are likely incarcerated in county jails and out of custody on supervision (e.g., on parole or probation). Most of the AB 865 petitions for resentencing are anticipated to be filed by self-represented litigants.

The Proposal

An optional Judicial Council form to implement AB 865 will aid self-represented litigants who may be eligible for this form of relief to petition the court for resentencing. The form will also be useful to courts by providing a standard format for self-represented litigants to file petitions for resentencing.

The proposed optional *Petition for Resentencing Based on Health Conditions from Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412):

- Includes space in the header to indicate a petitioner's CDC or ID number and date of birth, the identifiers to assist court staff to connect a defendant applying for resentencing to the appropriate case if the pro. per petitioner does not accurately report his or her case number;
- Asks whether the petitioner is serving a felony conviction and whether he or she is in custody or on supervision;
- Includes space to list the date(s) and offense(s) of conviction;
- Directs a petitioner to indicate branch and dates of military service;
- Prompts the petitioner to select or identify the qualifying health condition resulting from military service;
- Asks whether the petitioner believes that the health conditions resulting from service were not considered as a factor at sentencing;
- Asks whether the petitioner was sentenced before January 1, 2015;
- Directs the petitioner to include supporting documentation of his or her claim, including military documents, mental health treatment records, or medical records, if available; and
- Instructs that proposed form CR-106 can be used to provide proof of service.

Alternatives Considered

The committee considered titling the form *Petition for Resentencing Based on Mental Health Problems From Military Service* but, after receiving feedback, realized that the title did not fully capture the enumerated conditions listed in Penal Code section 1170.91(b). Specifically, though traumatic brain injury may be considered a mental health problem in some circumstances, it is more often conceived of as a physical disability or physical health problem. To remedy this ambiguity, the committee retitled the form *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)*. For the same reason, the committee recommends using the term "health condition" throughout the form.

Fiscal and Operational Impacts

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

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is the form written in a way that would be understandable to the intended user, an unrepresented criminal defendant with prior military service who is serving a felony sentence and may still be in criminal custody?
- The form is primarily intended for use by self-represented litigants, but it may also be used by attorneys. However, the form is drafted from a self-represented litigant's perspective (e.g., item #1, "I am currently serving a sentence for the conviction listed below"). Is this confusing? Should the form be modified to exclude attorney information and limited to use only by self-represented litigants? Are there other ways this form could be drafted so that both attorneys and self-represented litigants can use the same form?
- Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?
- Is the term "health conditions" the best term to encompass the conditions enumerated in Penal Code section 1170.91(b)? If not, what term should be used?
- Given that the form suggests providing supporting documentation, including medical and mental health treatment records, should the form also mention the process for filing those documents under seal? If so, how should that process be described for a self-represented litigant?
- Should an "INFO" form also be developed to accompany this form to aid self-represented litigants in filling it out and filing with the court?

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

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

Attachments and Links

1. Proposed form CR-412/MIL-412, at page 5

2. Link A: Assem. Bill 865, (Stat. 2018, ch. 523) at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB865
3. Link B: Pen. Code, § 1170.91, at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: CDC OR ID NUMBER: DATE OF BIRTH:	
PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS FROM MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)	CASE NUMBER:
Instructions: File this petition with the same court where you were sentenced. You will need to file a separate petition for each case in which you are asking for resentencing.	*FOR COURT USE ONLY* DATE TIME: DEPARTMENT:

I (*name*): , the defendant in the above-entitled case, declare as follows:

1. ☐ I am currently serving a sentence for the felony conviction listed below.
   - ☐ I am currently in jail or prison.
   - ☐ I am on supervision (for example, probation, parole, PRCS, mandatory supervision) because of my conviction.
2. ☐ On *(date of conviction):* , I was convicted of the following felony offenses:

Code	Section	Name of offense

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

3A. ☐ I was a member of the U.S. military. I served in *(branch of military):* from *(date of entry into military):* until *(last date served in the U.S. military):*

3B. ☐ I am currently a member of the U.S. military. I serve in *(branch of military)*: and my entry date was:

4. ☐ I believe that as a result of my military service, I am a person who may be suffering from the following health conditions *(check all that apply):*
   - ☐ Sexual trauma
   - ☐ Traumatic brain injury (TBI)
   - ☐ Post-traumatic stress disorder (PTSD)
   - ☐ Substance abuse
   - ☐ Mental health problems *(list or describe)*:
5. ☐ I believe that when I was sentenced, the judge did not consider my health condition resulting from my military service as a factor in deciding my sentence.
6. ☐ I was sentenced before January 1, 2015.
7. ☐ I have attached relevant records or other documents supporting my claim (for example, military records, conviction documents, mental health treatment records, medical records).

Date:

▶ _____
SIGNATURE OF PETITIONER/DEFENDANT

Proof of Service **form CR-106 may be used to provide proof of service of this petition.**

Form Approved for Optional Use
Judicial Council of California
CR-412/MIL-412 [New January 1, 2020]

PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS FROM MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)

Penal Code, § 1170.91(b)
www.courts.ca.gov

Item number: 25

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise forms CR-187, Motion to Vacate Conviction or Sentence, and CR-188, Order on Motion to Vacate Conviction or Sentence

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf

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: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-25

Title Criminal Procedure: Motion and Order to Vacate Conviction or Sentence	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Revise forms CR-187 and CR-188	Proposed Effective Date January 1, 2020
Proposed by Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Contact Eve Hershcopf, 415-865-7961 Eve.Hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes revision of two optional forms, *Motion to Vacate Conviction or Sentence* (form CR-187) and *Order on Motion to Vacate Conviction or Sentence* (form CR-188), in response to recent legislation (Assembly Bill 2867) that clarifies the timing and procedural requirements of Penal Code section 1473.7 for vacating a conviction or a sentence based on prejudicial error related to immigration consequences or newly discovered evidence of actual innocence.

Background

Penal Code section 1473.7, adopted effective January 1, 2017 (Assem. Bill 813; Stats. 2016, ch. 739), permits individuals convicted of criminal offenses and no longer in custody to file a motion to vacate a conviction or sentence based on either of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence.

Prior to passage of AB 813, California law did not provide persons no longer in custody with a procedure for challenging a conviction based on a mistake of law regarding immigration consequences, or on ineffective assistance of counsel in properly advising of these consequences when the person learned of the error post-custody. (Assem. Com. on Public Safety, analysis of Assem. Bill No. 813 (2015–2016 Reg. Sess.) p. 5, *http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB813*.) Optional forms CR-187 and CR-188 were adopted by the Judicial Council effective January 1,

2018, to implement the provisions of AB 813 and assist self-represented individuals and the courts to adhere to the procedural requirements of section 1473.7.

In *People v. Morales* (2018) 25 Cal.App.5th 502, the court interpreted the application of section 1473.7 and held that a person did not have to be in immigration removal proceedings in order to seek relief under the statute.

In 2018, the Legislature passed Assembly Bill 2867 to ensure greater efficiency and uniformity in the implementation of section 1473.7 by further clarifying the timing and procedural requirements for motions under the statute. (Assem. Bill 2867; Stats. 2018, ch. 825, § 1.) The amendments to the statute replace a requirement that the individual not be currently "imprisoned or restrained" with a requirement that the individual no longer be "in criminal custody." Forms CR-187 and CR-188 also may be used for motions and orders under Penal Code section 1016.5, but those proceedings are not affected by this proposal.

The Proposal

The proposal would revise *Motion to Vacate Conviction or Sentence* (form CR-187) to incorporate the following, consistent with amendments to section 1473.7:

- Separate requests for relief under sections 1473.7(a)(1) (relief based on prejudicial error regarding immigration consequences) and (a)(2) (relief based on newly discovered evidence of actual innocence);
- For motions under either sections 1473.7(a)(1) or (a)(2), replace "I am not currently imprisoned or restrained" with "I am not currently in criminal custody," consistent with the language of the amended statute, and include examples of actual and constructive custody to assist self-represented petitioners;
- For requests for relief under section 1473.7(a)(1), note that a finding of legal invalidity may, but is not required to, include a finding of ineffective assistance of counsel;
- For requests for relief under section 1473.7(a)(1), direct the petitioner to describe how the conviction or sentence being challenged is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization, and explain the statute's presumption of legal invalidity;
- Replace a reference to "incompetence of counsel" with "ineffective assistance of counsel," consistent with the language of the amended statute;
- In the request to waive a petitioner's personal presence, delete "I am represented by counsel who will appear at the hearing," consistent with the amended statute; and
- Other nonsubstantive technical changes to format.

The proposal would revise *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to incorporate the following, consistent with amendments to section 1473.7:

- Separate orders under section 1473.7(a)(1) and (a)(2);
- Provide an option for the court to dismiss a motion under section 1473.7(a)(1) because it was not filed with reasonable diligence, and under section 1473.7(a)(2) because the moving party either failed to exercise due diligence in discovering the evidence that provides a basis for relief or failed to file without undue delay;
- In granting or denying a request to waive a petitioner's personal presence, delete the reference requiring the presence of counsel, consistent with the amended statute;
- Add the following language (in italics) to the court's grant or denial of a request to vacate the conviction or sentence under section 1473.7(a)(1): the conviction or sentence is legally invalid due to prejudicial error *damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere*;
- Combine the grant or denial of the request to vacate the conviction or sentence with the grant or denial of the request to permit the moving party to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty; and
- Other nonsubstantive technical changes to format.

Alternatives Considered

The committee did not consider alternatives, determining that it was important to be responsive to the legislative intent "to provide clarification to the courts regarding section 1473.7 of the Penal Code to ensure uniformity throughout the state and efficiency in the statute's implementation" by incorporating the Legislature's clarifications regarding the timing and procedural requirements of Penal Code section 1473.7 into forms CR-187 and CR-188.

Fiscal and Operational Impacts

Expected costs include training, possible case management system updates, and the production of revised forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed revisions an effective way to address the legislative changes to section 1473.7?
- It is anticipated that the proposed form will primarily be used by self-represented litigants, though it may also be used by attorneys representing litigants. As proposed, the form is drafted to reflect a self-represented litigant's perspective (e.g., item #1, "I am currently serving a sentence for the conviction listed below"), though it allows for an attorney to sign the form. Is this dual use confusing? Should the form be limited to use only by self-represented litigants? Are there other ways this form could be drafted so that both attorneys and self-represented litigants could use the same form?

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

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

Attachments and Links

1. Forms CR-187 and CR-188, at pages 5–9
2. Link A: Assem. Bill 813, (Stats. 2016, ch. 739) at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB813*
3. Link B: Assem. Bill 2867, (Stats. 2018, ch. 825) at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2867*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
MOTION TO VACATE CONVICTION OR SENTENCE **(Pen. Code, §§ 1016.5, 1473.7)**	***FOR COURT USE ONLY*** DATE: TIME: DEPARTMENT:

Instructions — Read Carefully

- You must file a separate motion for each separate case number.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- **File the motion in the superior court in the county where the conviction or sentence was imposed**. Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in the above case number. On *(date)* , I was convicted of a violation of the following offenses *(list all offenses included in the conviction)*:

CODE	SECTION	TYPE OF OFFENSE *(felony, misdemeanor, or infraction)*

If you need more space for listing offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

2. ☐ **MOTION UNDER PENAL CODE SECTION 1016.5**

GROUNDS FOR RELIEF: I am requesting relief based on the following:

a. Before my acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise me that the conviction might have immigration consequences as required under Penal Code section 1016.5(a).

b. The conviction that was based on my plea of guilty or nolo contendere may result in immigration consequences for me, including possible deportation, exclusion from admission to the United States, or denial of naturalization.

c. I likely would not have pleaded guilty or nolo contendere if the court had advised me of the immigration consequences of my plea. *(People v. Arriaga* (2014) 58 Cal.4th 950.)

Supporting facts

Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages.You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

3. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity**

I am not currently in criminal custody (criminal custody includes in jail or prison; on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

GROUNDS FOR RELIEF: I am requesting relief based on the following:

a. The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged my ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere (no contest). (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

b. **Supporting facts**

Tell your story briefly. Describe the facts you allege to be prejudicial error. Include information that shows that the conviction you are challenging is currently causing or has the possibility of causing your removal from the United States, or the denial of your application for an immigration benefit, lawful status, or naturalization.

CAUTION: *You must state facts, not conclusions.* For example, if you are claiming ineffective assistance of counsel, you must state facts detailing what your attorney did or failed to do and how that affected your plea.

Note: There is a presumption of legal invalidity (it will be assumed that your conviction or sentence is not legally correct) if:
(1) you pleaded guilty or nolo contendere based on a law that provided that the arrest and conviction would be deemed never to have occurred if you completed specific requirements;
(2) you completed those specific requirements; and
(3) despite completing those requirements, your guilty or nolo contendere plea has been or possibly could be used as a basis for adverse immigration consequences.

(*If necessary, attach additional pages. You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

4. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

I am not currently in criminal custody (criminal custody includes in jail or prison; or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. Newly discovered evidence of actual innocence exists that requires vacating the conviction or sentence as a matter of law or in the interests of justice.

b. I discovered the new evidence of actual innocence on *(date):*

c. **Supporting facts**

Tell your story briefly. Describe the facts you allege to constitute newly discovered evidence of actual innocence. (*If necessary, attach additional pages.You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

5. ☐ I request that the court hold the hearing on this motion without my personal presence for the following reasons:

6. I request that the court vacate the conviction or sentence in the above-captioned matter.

7. I request that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF MOVING PARTY OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 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:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE **(Pen. Code, §§ 1016.5, 1473.7)**	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

1. **FOR PURPOSES OF PENAL CODE SECTION 1016.5 RELIEF, THE COURT**

   ☐ grants ☐ denies the moving party's request to vacate the judgment and to permit the moving party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

2. **FOR PURPOSES OF PENAL CODE SECTION 1473.7(a)(1) RELIEF, THE COURT**

   a. ☐ denies the motion because it was not filed with reasonable diligence under Penal Code section 1473.7(b)(2), as specified below:

   b. ☐ grants ☐ denies the request that the court hold the hearing *without* the personal presence of the moving party.

   c. ☐ grants ☐ denies the moving party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, and to permit the moving party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

3. **FOR PURPOSES OF PENAL CODE SECTION 1473.7(a)(2) RELIEF, THE COURT**

   a. ☐ denies the motion because the moving party failed to exercise due diligence in discovering the evidence that provides a basis for relief, or failed to file without undue delay from the date the moving party discovered or could have discovered the evidence, as required by Penal Code section 1473.7(c) and as specified below:

   b. ☐ grants ☐ denies the request that the court hold the hearing *without* the personal presence of the moving party.

   c. ☐ grants ☐ denies the moving party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence and to permit the moving party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty. The court's basis for this ruling is specified below:

Date:

(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
CR-188 [Rev. January 1, 2020]

Item number: 26

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 4/10/19

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Legal Accuracy of Forms

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

Staff contact (name, phone and e-mail): Nicole Giacinti, (415) 865-7598, nicole.giacinti@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Item 8: To comply with Senate Bill 190 (Mitchell; Stats. 2017, ch. 678) remove references to payment of fees from form JV-618, along with other sunsetted provisions. Include required title IV-E dismissal findings and orders to improve the legal accuracy of form JV-364. Create a findings and orders form for the statutorily authorized process of reinstatement of reunification services.

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

SPR19-26

Title
Juvenile Law: Legal Accuracy of Forms

Proposed Rules, Forms, Standards, or Statutes
Revise forms JV-180, JV-364, and JV-618

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends revising three forms to comply with recent statutory changes reforming juvenile justice and out-of-home case processes:

- Form JV-618, to comply with Senate Bill 190 (Mitchell; Stats. 2017, ch. 678), which rescinded the requirement that the family of a child who has been declared a delinquent ward pay certain fees associated with probation conditions and out-of-home placement of a child;
- Form JV-364, the dependency dismissal form, to include the necessary title IV-E findings.
- Form JV-180, to comply with permanency goals established by Continuum of Care Reform (CCR), to include a check box for resumption of reunification services; and

The Proposal

Waiver of Rights (form JV-618)

Under SB 190, delinquent wards may no longer be ordered to pay fees associated with out-of-home placement, drug testing, or home detention programs such as ankle monitors. Consequently, to maintain legal accuracy, *Waiver of Rights* (form JV-618), which states that the minor may be required to pay fees, must be revised. This form also contains a citation to an outdated Penal Code section related to firearm restrictions; hence, a revision is recommended to reflect the current Penal Code section.

The specific form revisions proposed are:

- Delete the reference to payment of "fees" in item 4g.
- Update item 4d to reflect the correct Penal Code section related to firearm restrictions, which changed since the form was last revised.

Termination of Dependency in Adoption (form JV-364)

Proposed revisions to forms JV-364 and JV-180 are driven by Continuum of Care reform (CCR), which seeks to improve the time to, and stability of, permanency for foster youth.[1] *Termination of Dependency* (form JV-364), is a mandatory form that is part of a series of adoption forms for use in juvenile cases.

The committee recommends that form JV-364 be revised to include the title IV-E findings that are required to claim federal dollars, to ensure that gaps in funding do not occur.[2] Such gaps are detrimental to the stability of placements; consequently, to comply with the permanency goals established by CCR, it is important to ensure that juvenile forms do not have the potential to create funding issues. Under the federal statutory scheme, title IV-E funding is retroactive, which means that the findings the court makes at status review hearings are backward looking. For this same reason, whenever a case is dismissed, findings must establish that the agency complied with federal requirements for those months leading up to the dismissal. Form JV-364—which dismisses the dependency case--does not currently include those findings.

The specific form revisions proposed are:

- Include two title IV-E findings, the *reasonable efforts* finding and the *permanent plan* finding, to ensure that the form contains the required federal findings.
- Revise the title to clarify that the form is only to be used when the permanent plan achieved is adoption.

Request to Change Court Order (form JV-180)

Currently, form JV-180 includes a check box to request termination of reunification services but does not include a check box to request that services be resumed under Welfare and Institutions Code section 366.3(f). Recognizing that return home is often the best permanent plan for some children, CCR revised Welfare and Institutions Code section 366.22(a)(3) to include return home as a permanent plan option for children who are in out-of-home care when reunification services are terminated. In light of this statutory change implemented by CCR, it is necessary to revise form JV-180 to reflect this change in law and provide a mechanism for parents to have their request for additional services heard.

While revising the form to comply with the law, the committee is also proposing revising it to use the nongendered terms "parent' and "sibling" for mother, father, sister, and brother.

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[1] See Assembly Bill 403 (Stone; Stats. 2015, ch. 773) and Senate Bill 794 (Comm. on Hum. Svcs; Stats. 2015, ch. 425).

[2] See 42 U.S.C. 671 et seq., which establishes guidelines for receipt of federal dollars for foster care.

The specific form revisions proposed are:

- Include a check box in item 2 that allows parents to request statutorily authorized resumption of services under Welfare and Institutions Code section 366.3(f).
- Change the terms mother, father, sister, and brother to the nongender terms "parent" and "sibling."

Alternatives Considered

The committee initially considered whether the *Termination of Dependency* (form JV-364) should apply to those instances where dependency is terminated after finalization of legal guardianship or placement with a noncustodial parent, in addition to adoption. After a robust discussion about the purpose of form JV-364, the committee determined that the form's purpose is strictly for use in adoption cases, as stated in rule 5.730(g); as such, the form should not be expanded for use in legal guardianship or cases where the child is placed with the previously noncustodial parent. To address any confusion caused by the fact that the form is mandatory but does not state on its face that it is limited to adoptions, the committee recommends changing the title of the form to clarify that it applies only to adoption cases.

While discussing how to include an option to request resumption of reunification services on the *Request to Change Court Order* (form JV-180), the committee also considered whether the form should be restructured so that the requesting party need not answer questions 6 and 7, which ask for a description of what previous order should be changed and what, if any, circumstances have changed since that order was issued. Although a typical request to change a court order requires a showing of changed circumstances, a request to resume reunification services does not; thus, the committee considered whether answering those questions put an additional burden on the party requesting services. After consideration, the committee determined the form should not be restructured to allow those parties requesting resumption of services to skip questions 6 and 7. In coming to this decision, the committee reasoned that questions 6 and 7 provide useful information for the court and answering them does not impose an additional burden on the requesting party.

The committee also discussed changing the name of the form. Form JV-180 is titled *Request to Change Court Order*, but often the request is for the court to *make* an order, rather than to change an existing order. Upon consideration, the committee determined it best to leave the title as is, both for consistency and because a request for a court order can be considered a change from the status quo.

Fiscal and Operational Impacts

Because minor changes are being made to existing forms, this proposal is unlikely to impose any implementation costs or result in operational impacts beyond the training of judicial officers as to the content of the new forms.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 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-180, JV-364, and JV-618, at pages 5–10

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
WAIVER OF RIGHTS—JUVENILE DELINQUENCY		CASE NUMBER:

Read this form carefully. The judge will ask you if you understand each right and if you want to give up that right.

1. I am the youth in this case. My attorney's name is:
2. I have talked with my attorney about what happened in my case and why I am being charged in this case. I have been told what the District Attorney would have to prove at a trial and the possible ways to fight my case. I want to
   a. ☐ admit the charge(s), which means that I am agreeing that I did what the petition says.
   b. ☐ plead no contest, which means that I do not want to fight my case at a trial, but I'm not agreeing that I did what the petition says I did. I am letting the judge decide whether the charges are true and know that the judge will probably find them true.
3. ☐ The charge(s) I am admitting or pleading no contest to are:

For the items below, write your initials on each line that applies to your case. If you have a question about an item, ask your attorney or the judge before you initial that item.

4. **I understand the following consequences of my admission:** *Initial*
   a. If I plead no contest or submit the petition on the report, the court will probably find that the petition is true. _____
   b. The most that I can be punished for my admitting to these charges is a commitment (to be locked up) at the Division of Juvenile Justice or a local confinement facility like juvenile hall or ranch for: _____
   c. If I am not a United States citizen, my admission or no contest plea may mean that I will have to leave the country (be deported) and never allowed to return (exclusion) and/or never be allowed to become a United States citizen. _____
   d. If I am declared a ward of the court, a violation of: will prohibit me from owning, possessing, or having in my custody or control any gun or firearm until I am thirty (30) years old. (Penal Code, § 29820.) _____
   e. The court may order that my driver's license be restricted, delayed, or suspended. _____
   f. I may be required to register under _____
      ☐ Penal Code section 186.30 (gang).
      ☐ Penal Code section 290 (sex offender).
   g. My parents or legal guardians and I may have to pay for the things I did that hurt others and caused them to lose money, including paying for things I took, broke, or damaged. We may also have to pay fines.
5. **Waiver of Rights.** I understand that I have all of the rights below and that by admitting the charge(s) in the petition, or pleading no contest, I will not have a trial or hearing and I will give up all of these rights: *Initial*
   a. The right to a speedy court trial or hearing where the judge would listen to all the evidence and decide if the district attorney has enough evidence to prove that I did what the petition says I did. _____
   b. The right to see, hear, and have my attorney question witnesses, including the officer who wrote the report, and any of the people who provided information that is written in the report. _____
   c. The right to testify or speak up for myself in court. _____
   d. The right to be silent and not say anything that might hurt myself or my case. _____
   e. The right to have witnesses come to court, even if they don't want to, and talk to the judge about my case. _____
   f. The right to appeal, or ask another court to look at, decisions by the judge that I disagree with. _____

CHILD'S NAME:	CASE NUMBER:

6. My attorney has explained that when I admit to: , listed Count(s) as: , I will have crime(s) on my record that are "Strike" offenses under the Three Strikes Law. I have talked with my attorney about what this could mean in my future and how I may have to spend much more time in jail or prison if I get in trouble again because I am admitting to these offenses today. *Initial* _____

7. I have talked to my lawyer about the charge(s) in the petition, the facts of what happened, and any possible defenses. We have talked about what could happen if I admit, including what could happen if I break the rules of probation. _____

I declare under penalty of perjury, which means that I am guilty of a crime if I am lying, that my attorney has gone over this form with me, explained what it means, and answered my questions. I understand the rights I am giving up, I know what could happen because of my admission, and I am admitting to doing what the petition says because I want to and not because someone is forcing me to do this.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF YOUTH)

DECLARATION OF INTERPRETER

The primary language of the child is

☐ Spanish.
☐ other *(specify):* _____

I certify that I interpreted this form for the parent or legal guardian in that person's primary language to the best of my ability.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF INTERPRETER)

DECLARATION OF ATTORNEY

I am the attorney for the child. I have explained and discussed with my client the above rights, the facts of his or her case, possible defenses, and the consequences of his or her decision to enter an admission. Based on my conversation with the minor, I am satisfied that his/her admission to the petition is knowingly, intelligently, and voluntarily made, and I consent to the admission.

Date:

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

ORDER AND FINDING

I have spoken with the child, reviewed the waiver form, and find that the child has been fully informed of the constitutional rights and the consequences of the admission in this case and understands them. I further find that the child has knowingly, intelligently, and voluntarily waived his/her rights and that there is a factual basis for the minor's admission.

IT IS ORDERED that the minor's admission be accepted and entered in the minutes of this court. This executed waiver of rights form is filed in the records of this court and incorporated in the above-numbered case by reference.

Date:

▶ _____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:		*FOR COURT USE ONLY*
NAME:			**DRAFT Not approved by the Judicial Council**
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (*name*):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			JUVENILE DEPENDENCY CASE NUMBER:
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
CHILD'S NAME:			

TERMINATION OF DEPENDENCY FOR ADOPTION
(Juvenile)

The county agency has complied with the case plan by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

The permanent plan of adoption has been achieved.

DEPENDENCY AND JUVENILE COURT JURISDICTION OF THE ABOVE-REFERENCED CHILD ARE TERMINATED.

ORDER FOR REVIEW HEARING SET ON *(DATE):* IS VACATED.

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
JV-364 [Rev. January 1, 2020]

Cal. Rules of Court, rule 5.730
www.courts.ca.gov

JV-180 Request to Change Court Order

This form can be used to ask the court to change an order, to ask the court to dismiss your case, to ask the court to terminate reunification services, or to ask the court to recognize your relationship with your sister or brother. After filling out this form, take it to the clerk of the court.

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Name of Child or Youth:

Clerk fills in case number when form is filed.

Case Number:

1 Your information:

a. I am the:
☐ child or youth ☐ parent ☐ legal guardian
☐ foster parent ☐ sibling or other relative *(specify):* _____
☐ social worker ☐ probation officer ☐ attorney
☐ other _____

b. My name: _____

c. My address: _____

d. My city, state, zip code: _____

e. My telephone number: _____

f. *If you are an attorney:*
My client's name: _____
My client's address *(if confidential, see item 3):*
_____
My client's relationship to the child or youth: _____
My State Bar number: _____

2 Type of request *(check the appropriate box below and add specific details in items 6–9, as applicable):*

a. ☐ I am asking the court to change an order.
b. ☐ I am asking the court to terminate its jurisdiction.
c. ☐ I am asking the court to terminate reunification services.
d. ☐ I am asking the court to order that reunification services be resumed for six months.
e. ☐ I am asking the court to recognize my relationship with my sibling(s).
(1) I am related to my sibling(s) through *(name of parent):*
(2) I am related to my sibling(s) ☐ by blood or adoption ☐ by marriage.

3 *If you want to keep your address or your client's address confidential, fill out* Confidential Information (Request to Change Court Order) *(form JV-182), and do not write the address on this form.*
☐ *Check here if form JV-182 is attached.*

4 Child's or youth's information:

a. Name: _____

b. Date of birth: _____

c. Attorney *(if known):* _____

d. The child or youth lives with or in a *(check all that apply):*
☐ parent ☐ legal guardian ☐ relative
☐ foster home ☐ group home ☐ I don't know

e. Name of the person the child or youth lives with or the place where he or she lives: _____
Address: _____
☐ *Check here if unknown.*

Name of child or youth: _____

Case Number:

5 Information about parents, legal guardians, and others:

a. Names of parents or legal guardians:

_____

☐ *Check here if unknown.)*

b. Address of parent/legal guardian: _____

☐ *Check here if unknown.)*

c. Address of parent/legal guardian: _____

☐ *Check here if unknown.)*

d. Indian tribe *(if applicable and known):* _____

e. CASA volunteer *(if applicable and known):* _____

f. Educational rights holder *(if applicable and known):* _____

g. Social worker or probation officer *(if applicable and known):* _____

If you are asking the court to recognize your relationship with your brother or sister but not asking the court to change an order, you may skip to item 8.

6 On *(date, if known):* _____ the judge made the following order that I think should be changed:

_____

_____

_____

_____

7 What has happened since that order that might change the judge's mind? *(Give new information that the judge did not have when the order was made):*

_____

_____

_____

_____

8 What new order or orders do you want the judge to make now?

_____

_____

_____

_____

9 Why would the requested order or action be better for the child or youth?

_____

_____

_____

_____

10 ☐ *Check here if you need more space for any of the answers. Attach a sheet of paper and write "JV-180" at the top of the page.* Number of pages attached: _____

Name of child or youth: _____

Case Number:

11 I have had a copy of my request sent to the people listed below, as applicable. I have checked the correct box to the right of each name to show whether, as far as I know, that person agrees with my request.

If you do not have an attorney, the clerk will send notice and copies of your request to all persons required to receive notice under Welfare and Institutions Code sections 297 and 386 and rules 5.524 and 5.570 of the California Rules of Court.

	Name	Agree	Disagree	Don't Know	Not Applicable
Child *(if 10 years old, or older)* or youth:		☐	☐	☐	☐
Child's or youth's attorney:		☐	☐	☐	☐
Parent:		☐	☐	☐	☐
Parent:		☐	☐	☐	☐
Legal guardian:		☐	☐	☐	☐
Legal guardian:		☐	☐	☐	☐
Social worker:		☐	☐	☐	☐
Probation officer:		☐	☐	☐	☐
Current caregiver/foster parent:		☐	☐	☐	☐
Preadoptive parent:		☐	☐	☐	☐
CASA volunteer:		☐	☐	☐	☐
Educational rights holder:		☐	☐	☐	☐
Indian tribe:		☐	☐	☐	☐
Indian custodian:		☐	☐	☐	☐
Sibling *(if petition filed & 10+ years old):*		☐	☐	☐	☐
Sibling's caregiver:		☐	☐	☐	☐
Sibling's attorney:		☐	☐	☐	☐
Attorney for parent/legal guardian:		☐	☐	☐	☐
Attorney for parent/legal guardian:		☐	☐	☐	☐
County counsel:		☐	☐	☐	☐
District attorney:		☐	☐	☐	☐
Other:		☐	☐	☐	☐

12 You can ask the judge to make a decision without a court hearing if all the people named above agree with your request. *Check here* ☐ *if you want a decision without a hearing.*

13 If anyone disagrees with your request, please explain why *(if known):*

_____

_____

_____

_____

14 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct to the best of my knowledge.

Date:

_____ ▶ _____

Type or print name *Signature*

Item number: 27

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Out-of-County Placements (Amend Cal. Rules of Court, rule 5.614; revise form JV-555)

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

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda:

Family and Juvenile Law Advisory Committee Annual Ageda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
1. k. AB 1930 (Stone) (Foster Care) (Ch. 910, Statutes of 2018)
Adopts various changes to further facilitate implementation of the Continuum of Care Reform (CCR), which was inititated in 2015 in order to better serve children and youth in California's child welfare services system.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-27

Title
Juvenile Law: Out-of-County Placements

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.614; revise form JV-555

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising one form, to conform to recent statutory changes regarding (1) the circumstances that allow waiving the requirement for notice of the child welfare agency's intent to place a child out of county; and (2) the time frame for notice of, and objection to, the agency's intent to move a foster child to a different county, if that child is transitioning from a temporary placement facility.

Background

Assembly Bill 1688 (Rodriguez; Stats. 2016, ch. 608) required the county to provide notice to the child's attorney and to the child, if 10 years of age or older, before moving the child to a placement outside the county, and allowed for the child and child's attorney to object to the move. At the September 21, 2018 meeting of the Judicial Council, effective January 1, 2019, the council amended rule 5.610 and repealed and adopted rule 5.614 of the California Rules of Court, and approved *Notice of Intent to Place Child Out of County* (form JV-555) and *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556), to conform to the statutory changes in that bill regarding who a child welfare agency must notice when moving a foster child to a different county.[1]

[1] All further rule references are to the California Rules of Court, unless otherwise indicated.

Assembly Bill 1930 (Stone; Stats. 2018, ch. 910) provides for the waiving of notice, if certain circumstances exist, and shortens the time frame for notice if the child is transitioning from a temporary placement facility. These new statutory changes render the recently amended rule 5.614 and recently revised form JV-555 inaccurate.

The Proposal

Rule 5.614

Rule 5.614 would be amended to ensure it conforms to the requirements in Welfare and Institutions Code section 361.2(h) that were amended by AB 1930.[2]

Rule 5.614(b) would be amended to reflect the new provision that the notice required before placement may be waived if certain circumstances exist, by cross-referencing the new section 361.2(h)(2)(A).[3]

Rule 5.614(e) would be amended to delete the time frame for written notice specified in section 361.2(h) and would be replaced with a cross-reference to that statute. This cross-reference should obviate the need to amend the rule again if this code section is amended in the future. The rule would also continue to identify the optional forms that can be used for notice and objection.

Additionally, the title of rule 5.614 would be changed from "Intercounty Placements" to "Out-of-County Placements" to correspond with the language within the rule, the names of the forms used for notice and objection, and the nomenclature used throughout the state. The title of Chapter 7 would also be changed to include the phrase "Out-of-County Placements."

Notice of Intent to Place Child Out of County (form JV-555)

The proposal revises one optional form used to notice a planned out-of-county placement. Form JV-555's instructions—for notice at the top of the form, and for objection in item 3—would be revised to indicate the new time frames for notice and objection if the child is transitioning from a temporary placement facility.

Alternatives Considered

For this proposal, the committee considered not revising the rule or amending the form, but the rule and form would be inaccurate and conflict with recent statutory amendments to section 361.2(h).

[2] All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

[3] The notice required before out-of-county placement may be waived if (1) the child and family team had determined that the identified placement is in the best interest of the child, (2) no member of the child and family team objects to the placement, and (3) the child's attorney has been informed of the intended placement and has no objection, and where applicable, the Indian custodian or child's tribe has been informed of the intended placement and has no objection. (§ 361.2(h)(2)(A).)

Fiscal and Operational Impacts

This proposal implements minor changes to the law that became effective January 1, 2017. It will likely slightly reduce the written notice requirements which will in turn slightly reduce workload for social workers who are required to serve the written notices, and court clerks who must file the notices. In implementing the revised forms, courts will incur standard reproduction costs.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.614, at page 4
2. Form JV-555, at pages 5–6
3. Link A: Assembly Bill 1930, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1930*

Rule 5.614 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Chapter 7. Intercounty Transfers; ~~and~~ Out-of-County Placements; Interstate Compact on the Placement of Children

Rules 5.610–5.613 * * *

Rule 5.614. ~~Intercounty~~ Out-of-County Placements

(a) * * *

(b) ~~Participants to be served with notice~~ Required notices

Unless the requirements for emergency placement in section 361.4 are met, or the circumstances in section 361.2(h)(2)(A) exist, before placing a child out of county, the agency must notify the following ~~participants~~ of the proposed removal:

(1) The ~~participants~~ persons listed in section 361.2(h);

(2) The Indian child's identified Indian tribe, if any;

(3) The Indian child's Indian custodian, if any; and

(4) The child's CASA program, if any.

(c)–(d) * * *

(e) Objection to proposed out-of-county placement

Each participant who receives notice under (b)(1)–(3) may object to the proposed removal of the child, and the court must set a hearing as required by section 361.2(h).

(1) An objection to the proposed ~~intercounty~~ out-of-county placement may be made by using *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556).

(2) An objection must be filed ~~no later than seven days after receipt of the notice.~~ within the time frames in section 361.2(h).

(f)–(h) * * *

JV-555 Notice of Intent to Place Child Out of County

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

This notice must be served with a blank copy of form JV-556, Objection to Out-of-County Placement and Notice of Hearing, *and must be provided 14 days before the proposed date of placement. If the child is moving from a temporary care facility, this notice must be provided immediately after oral notice.*

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 To:

a. Parent or guardian *(name):*

b. Parent or guardian *(name):*

c. Parent's attorney, if any *(name):*

d. Parent's attorney, if any *(name):*

e. Child's attorney *(name):*

f. Child, if 10 years of age or older *(name):*

g. Child's identified Indian tribe, if any *(name):*

h. Child's Indian custodian, if any *(name):*

i. Child's Court Appointed Special Advocate (CASA) program, if any *(name of person notified):*

2 Name of agency proposing move:

Address:

Phone number:

The agency intends to place the child out of county. The reasons why placement must be outside of the county are:

If you need more space, attach a sheet of paper and write "JV-555, Item 2—Reasons for Out-of-County Placement" at the top.

Number of pages attached: _____

Child's name: _____

Case Number:

3 **If you do not agree with the out-of-county placement, you may request a court hearing.** To do so, you can fill out form JV-556, ***Objection to Out-of-County Placement and Notice of Hearing***, and file it with the court within **seven days** after the date you received this notice, or seven days after you received oral notice that the child was moving from a temporary shelter facility.

I declare under penalty of perjury under the laws of the State of California that the information in items 1 and 2 is true and correct, which means that if I lie on the form, I am committing a crime.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Competency (Amend Cal. Rules of Court, rule 5.645; renumber rule 5.645(a)–(c) as rule 5.643)

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

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@ca.gov; Tareq Nazamy, 415-865-7666, tareq.nazamy@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 Annual Agenda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
1. p. AB 1214 (Stone) Juvenile proceedings: competency (Ch. 991, Statutes of 2018)
Revises and recasts statutory provisions governing the determination of competency in a juvenile delinquency proceeding. Requires the Judicial Council to adopt a rule of court governing the qualifications of experts appointed in these proceedings.

From the Collaborative Justice Courts Advisory Committee annual agenda approved by the Executive and Planning Committee on March 13, 2019: Item 8: Implementation of Legislation Regarding Juvenile Competency Evaluations: This joint project with members of the Family and Juvenile Law Advisory Committee implements the Rule of Court changes required by passage of AB 1214, which mandated the Judicial Council to adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles, as well as adopt rules for the implementation of the other requirements in this subdivision.

If requesting July 1 or out of cycle, explain:

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

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INVITATION TO COMMENT

SPR19-28

Title
Juvenile Law: Competency

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.645; renumber rule 5.645(a)–(c) as rule 5.643

Proposed by
Collaborative Justice Courts Advisory Committee
Hon. Richard A. Vlavianos, Chair

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov
Tareq Nazamy, 415-865-7666
tareq.nazamy@jud.ca.gov

Executive Summary and Origin

The Collaborative Justice Courts Advisory Committee and the Family and Juvenile Law Advisory Committee recommend amending and renumbering one rule, and amending one rule, to conform to recent statutory changes regarding a minor who is the subject of a petition filed under Welfare and Institutions Code sections 601 or 602, when the court has a doubt as to the minor's competency to understand the court proceedings.

Background

Assembly Bill 1214 (Stone; Stats. 2018, ch. 991) revises Welfare and Institutions Code sections 709 and 712, regarding a minor's competency to understand the court proceedings, to expand the duties of an expert evaluating the minor whose competency is in doubt. The bill also requires the Judicial Council to adopt a rule of court relating to the qualifications of those experts, in consultation with specified stakeholders.[1] The bill also mandates the Judicial Council to develop

[1] All further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court, unless otherwise indicated.

and adopt rules to implement the other requirements in section 709(b), also in consultation with specified stakeholders.

The Proposal

Rule 5.645 would be amended, and five new subdivisions would be added to the rule. Subdivisions (a)–(c), with slight modifications to existing language, would be renumbered as rule 5.643.

Rule 5.643

The subdivisions of current rule 5.645 that address the procedures for commitment to a county facility when the court believes a child is mentally disabled or may be mentally ill would be renumbered as rule 5.643. References to "mental retardation" would be replaced with "intellectual disability" or "developmental disability." References to "child" would be replaced with "minor." The remainder of the rule would be unchanged from what is now in subdivisions (a)-(c) of rule 5.645.

Rule 5.645

The remainder of current rule 5.645 would be revised to address expert qualifications and court proceedings for competency evaluations.

Subdivision (a) (currently, subdivision (d)) of the rule would be amended to remove the reference to Penal Code section 1367, as this section addresses an adult's competency to stand trial, and to replace the current definition of competency with a cross-reference to the definition in section 709(a)(2).

Subdivision (b) (currently, subdivision (d)(1)(B)–(C)) would be amended to identify the minimum training and experience needed for an expert to be eligible for appointment for forensic evaluations of juveniles.

Subdivision (c) would be added to identify the requirements of the court-appointed expert's interview of the minor.

Subdivision (d) would be added to address the mandate in section 709 that the expert must review all the available records, by requiring that each county, in its written protocol regarding competency required under section 709(i), include a description of the process for obtaining and providing the records to the expert to review.

Subdivision (e) would be added to identify the requirements for the expert's mandated consultation with the minor's counsel.

Subdivision (f) would be added to identify the requirements for the mandate that the expert gather a developmental history of the minor.

Subdivision (g) would be added to address the expert's written report requirements regarding whether the minor has the sufficient present ability to consult with counsel and whether the minor has a rational understanding of the proceedings.

Additionally, the Advisory Committee Comment at the end of the rule would be deleted as it is misleading and does not accurately reflect the procedure for obtaining regional center services.

Alternatives Considered

The committees discussed multiple potential rule topics, several of which were deferred.

Records review process. The committees discussed whether the rule should address the requirement that the expert must review all the records provided and specify the process, such as who provides the records to the expert and how the expert obtains confidential records. The committees concluded it was best to allow each county to determine its own process and decided to propose amending rule 5.645 to require that the written protocol mandated under section 709(i) include a description of the process for obtaining and providing the records to the evaluator to review, including who will obtain and provide the records to the evaluator.

Testing. The committees discussed whether the rule should address the requirement that the expert must administer age-appropriate testing unless the facts of the case render testing unnecessary or inappropriate. The committees discussed whether the rule should address the nature and content of evaluation tools and whether the rule should specify when testing is unnecessary or inappropriate. The committees concluded that these areas should be deferred to the expert evaluators and did not include this topic in the proposed rule.

Interpreters. The committees discussed whether the requirements that apply to court interpreters should apply to interpreters used by competency evaluators.[2] The committees decided that the requirements for a Judicial Council–certified interpreter would be too difficult to meet, particularly in smaller counties and for more rare languages. The committees also noted that the interpreters used for mental health evaluations are more akin to medical interpreters than interpreters for court proceedings.

"Additional qualified experts." The committees discussed the new provision in section 709 that allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The committees discussed whether the rule should specify the qualifications for these experts and whether additional experts should be subject to the requirements in the new rule. The committees concluded that the phrase "additional qualified experts" is ambiguous in the statute and that an appellate court should decide what this phrase means, not the Judicial Council through the rule-making process. The committees concluded that the current provision that does not preclude involvement of clinicians with other qualifications as consultants or witnesses should remain in the rule.

[2] Specifically, the committees reviewed Government Code section 68561 et seq. and rule 2.893.

School psychologists. The committees discussed whether rule 5.645 should be clarified to allow school psychologists to be appointed as experts in competency proceedings. This clarification would be made by removing the requirement that school psychologists have a doctoral degree and simply using the term "licensed psychologist." The committees discussed how this could create a larger pool of potential evaluators, but also discussed that school psychologists do not have the depth and breadth of education and training that one needs to obtain a doctoral degree. The committees concluded that school psychologists who do not hold a doctoral degree should not be included among the professionals listed in the rule who can conduct competency evaluations.

"Child" or "minor." One of the more robust discussions was whether the rule should use the term "child" or "minor." The current rules all use "child," but the statutes use "minor." The committees note that throughout the juvenile court rules and forms there is a consistent practice of using "child," and this term is clearly defined in rule 5.502.[3] Use of the term "child" is a reminder to all in the system that juvenile offenders are developmentally distinct from adults. "Minor" is not defined in rule 5.502. Since section 101(b) defines "child or minor" as a person under the jurisdiction of the juvenile court under section 300, 601, or 602, and because most children in delinquency court do not like to be called "child," the committees resolved to use the word "minor" in the proposed rules. The committee is aware that this makes the proposed competency rules inconsistent with the other rules of court that use the term "child," but concluded that tracking the statutory language and recognizing that delinquency proceedings involve older children outweigh considerations of consistence with other rules of court and Judicial Council forms.

Fiscal and Operational Impacts

It is important to note that the new legislative mandates regarding evaluators will likely increase costs to the courts, with no additional funding made available.

Costs for evaluations may increase due to more comprehensive evaluation and written report requirements. Some counties, particularly smaller counties, will have challenges finding qualified evaluators.

For counties that do not have existing protocols, there will also be increased costs for local implementation to develop the statutorily required county protocols, again with no additional funding made available to cover these costs.[4]

[3] Rule 5.502(5) provides: "'Child' means a person under the age of 18 years."

[4] Section 709(i) mandates that the "presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and any other entity that provides representation for minors, the district attorney, the regional center, if appropriate, and any other participants that the presiding judge shall designate, shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services."

There are also potential cost increases due to possible growth in litigation because, as the reports become more comprehensive, there will be more information on which to cross-examine the expert. Alternatively, more thorough reports could lessen the need for contested hearings because the reports may speak for themselves.

A major operational impact is that there likely will be longer time frames to complete the reports because of additional requirements to interview minor's counsel and attempt to interview the minor face-to-face, and increased written report requirements. Currently, the process generally takes three to four weeks. This time frame will likely expand, thus increasing the amount of time these children are held in secure custody.

A benefit, however, is that the reports received will be of much higher quality than under current standards and will be more useful for judicial decision-making.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should rule 5.645(g)(1)(C)(i) be more specific regarding the records reviewed by the evaluator? Should the rule list out the sources listed in section 709(b)(3)?
- Should rules 5.643 and 5.645 use the term "child" or "minor"?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 5.643 and 5.645, at pages 6–13
2. Assembly Bill 1214, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1214*

Rule 5.645 of the California Rules of Court would be amended, and subdivisions (a)–(c) would be renumbered as rule 5.643, effective January 1, 2020, to read:

Rule 5.643. ~~5.645.~~ Mental health or condition of ~~child~~ minor; court procedures[1]

(a) Doubt concerning the mental health of a ~~child~~ minor (§§ 357, 705, 6550, 6551)

Whenever the court believes that the ~~child~~ minor who is the subject of a petition filed under section 300, 601, or 602 is mentally disabled or may be mentally ill, the court may stay the proceedings and order the ~~child~~ minor taken to a facility designated by the court and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. The professional in charge of the facility must submit a written evaluation of the ~~child~~ minor to the court.

(b) Findings regarding a mental disorder (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional reports that the ~~child~~ minor is not in need of intensive treatment, the ~~child~~ minor must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(2) If the professional in charge of the facility finds that the ~~child~~ minor is in need of intensive treatment for a mental disorder, the ~~child~~ minor may be certified for not more than 14 days of involuntary intensive treatment according to the conditions of sections 5250(c) and 5260(b). The stay of the juvenile court proceedings must remain in effect during this time.

(A) During or at the end of the 14 days of involuntary intensive treatment, a certification may be sought for additional treatment under sections commencing with 5270.10 or for the initiation of proceedings to have a conservator appointed for the ~~child~~ minor under sections commencing with 5350. The juvenile court may retain jurisdiction over the ~~child~~ minor during proceedings under sections 5270.10 et seq. and 5350 et seq.

(B) For a ~~child~~ minor subject to a petition under section 602, if the ~~child~~ minor is found to be gravely disabled under section~~s~~ 5300 et seq., a conservator is appointed under those sections, and the professional in

[1] The text of current rule 5.645(a)–(c) would be amended, moved, and renumbered as rule 5.643. It is not underlined as new text because the language is currently contained in the California Rules of Court and to highlight the proposed amendments to the current rule.

charge of the ~~child's~~ minor's treatment or of the treatment facility determines that proceedings under section 602 would be detrimental to the ~~child~~ minor, the juvenile court must suspend jurisdiction while the conservatorship remains in effect. The suspension of jurisdiction may end when the conservatorship is terminated, and the original 602 matter may be calendared for further proceedings.

(c) Findings regarding ~~mental retardation~~ intellectual disability (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional finds that the ~~child~~ minor is ~~mentally retarded~~ intellectually disabled and recommends commitment to a state hospital, the court may direct the filing in the appropriate court of a petition for commitment of a ~~child~~ minor as a ~~mentally retarded~~ developmentally disabled person to the State Department of Developmental Services for placement in a state hospital.

(2) If the professional finds that the ~~child~~ minor is not ~~mentally retarded~~ intellectually disabled, the ~~child~~ minor must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(3) The jurisdiction of the juvenile court must be suspended while the ~~child~~ minor is subject to the jurisdiction of the appropriate court under a petition for commitment of ~~a mentally retarded~~ an intellectually disabled person, or under remand for 90 days for intensive treatment or commitment ordered by that court.

Rule 5.645. Mental health or condition of ~~child~~ minor; ~~court procedures~~ competency evaluations

~~(d)~~(a) Doubt as to ~~capacity to cooperate with counsel~~ minor's competency (§§ 601, 602, 709; ~~Pen. Code, § 1367~~)

(1) If the court finds that there is substantial evidence ~~that~~ regarding [or: about?] a ~~child~~ minor who is the subject of a petition filed under section 601 or 602 ~~lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her,~~ that raises a doubt as to the minor's competency as defined in section 709, the court must suspend the

proceedings and conduct a hearing regarding the ~~child's~~ minor's ~~competence~~ competency. ~~Evidence is substantial if it raises a reasonable doubt about the child's competence to stand trial.~~

~~(A)~~(2) Unless the parties have stipulated to a finding of incompetency, the court must appoint an expert to ~~examine the child to~~ evaluate the minor and determine whether the ~~child~~ minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether ~~the condition or conditions impair the child's competency~~ the minor is incompetent as defined in section 709(a)(2).

(3) Following the hearing on competency, the court must proceed as directed in section 709.

(b) Expert qualifications

~~(B)~~(1) To be appointed as an expert, an individual must be a:

~~(i)~~(A) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

~~(ii)~~(B) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist~~.~~; and

~~(C)~~(2) The expert, whether a licensed psychiatrist or psychologist, must:

~~(i)~~(A) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

~~(ii)~~(B) Have expertise in the cultural and social characteristics of children and adolescents;

~~(iii)~~(C) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children and adolescents;

~~(iv)~~(D) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

~~(v)~~(E) Possess a comprehensive understanding of effective interventions, as well as treatment, training, and programs for the attainment of competency available to children and adolescents; ~~and~~

~~(vi)~~(F) Be proficient in the language preferred by the ~~child~~ minor, or if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the ~~child.~~ minor; and

(G) Be familiar with juvenile competency remediation services available to the minor.

~~(2)~~(3) Nothing in this rule precludes involvement of clinicians with other professional qualifications from participation as consultants or witnesses or in other capacities relevant to the case.

~~(3) Following the hearing on competence, the court must proceed as directed in section 709~~.

(c) Interview of minor

The expert must attempt to interview the minor face-to-face.

(1) If an in-person interview is not possible due to distance, the interview may be conducted remotely, using videoconference or another form of remote electronic communication that allows the evaluator and the minor to communicate in real time and see each other during the interview, with no delay in aural or visual transmission or reception.

(2) If an in-person interview is not possible because the minor refuses an interview, the evaluator must try to observe and make direct contact with the minor to attempt to gain clinical observations that may inform the evaluator's opinion regarding the minor's competency.

(d) Review of records

(1) The evaluator must review all the records provided as required by section 709.

(2) The written protocol required under section 709(i) must include a description of the process for obtaining and providing the records to the evaluator to review, including who will obtain and provide the records to the evaluator.

(e) Consult with minor's counsel

(1) The expert must consult with minor's counsel as required by section 709. This consultation must include asking minor's counsel the following:

(A) If minor's counsel raised the question of competency, why minor's counsel doubts that the minor is competent;

(B) What has minor's counsel observed regarding the minor's behavior; and

(C) A description of how the minor interacts with minor's counsel.

(2) No waiver of the attorney-client privilege will be deemed to have occurred from minor's counsel's report of the minor's statements to the evaluator, and all such statements are subject to the protections in (g)(2) of this rule.

(f) Developmental history

The expert must gather a developmental history of the minor as required by section 709. This history must be documented in the report and must include the following:

(1) Whether there were complications or drug use during pregnancy that could have caused medical issues for the minor;

(2) When the minor achieved developmental milestones such as talking, walking, and reading;

(3) Psychosocial factors such as abuse, neglect, or drug exposure;

(4) Adverse childhood experiences, including early disruption in the parent-child relationship;

(5) Mental health services received during childhood and adolescence;

(6) School performance, including an Individualized Education Plan, testing, achievement scores, and retention;

(7) Acculturation issues;

(8) Biological and neurological factors such as neurological deficits and head trauma; and

(9) Medical history including significant diagnoses, hospitalizations, or head trauma.

(g) Written report

(1) Any court-appointed evaluator must examine the minor and advise the court on the minor's competency to stand trial. The expert's report must be submitted to the court, to the counsel for the minor, to the probation department, and to the prosecution. The report must include the following:

(A) A statement identifying the court referring the case, the purpose of the evaluation, and the definition of competency in the state of California;

(B) A brief statement of the expert's training and previous experience as it relates to evaluating the competence of a minor to stand trial;

(C) A statement of the procedure used by the expert, including:

(i) A list of all sources of information considered by the expert;

(ii) A list of all sources of information the expert tried or wanted to obtain but, for reasons described in the report, could not be obtained;

(iii) A detailed summary of the attempts made to meet the minor face-to-face and a detailed account of any accommodations made to make direct contact with the minor; and

(iv) All diagnostic and psychological tests administered, if any;

(D) A summary of the developmental history of the child;

(E) A summary of the evaluation conducted by the expert on the minor, including the current diagnosis or diagnoses that meet criteria under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, when applicable, and a summary of the minor's mental or developmental status;

(F) A detailed analysis of the competence of the minor to stand trial under section 709, including the minor's ability or inability to understand the nature of the proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental or developmental impairment;

(G) An analysis of whether and how the minor's mental or developmental status is related to any deficits in abilities related to competency;

(H) A summary of an assessment conducted for malingering or feigning symptoms, if clinically indicated, which may include psychological testing;

(I) If the minor has significant deficits in abilities related to competency, an opinion with explanation as to whether treatment can reduce the impairments related to the minor's deficits in competency abilities, the nature of that treatment, its availability, and whether restoration is likely to be accomplished within the statutory time limit;

(J) If psychotropic medication is considered appropriate and necessary, whether the treatment will likely restore the minor to mental competency, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer psychotropic medication in the county juvenile hall, and whether the minor has capacity to make decisions regarding psychotropic medication. If the expert is of the opinion that a referral to a psychiatrist is necessary to address these issues, the expert must inform the court of this opinion and recommend that a psychiatrist examine the minor; and

(K) A recommendation, as appropriate, for a placement or type of placement and treatment that would be most appropriate for restoring the minor to competency.

(2) Statements made to the appointed expert during the minor's competency evaluation and statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of these statements, must not be used in any other hearing against the minor in either juvenile or adult court.

~~**Advisory Committee Comment**~~

~~Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and adopt rules regarding the qualification of experts to determine competency for purposes of juvenile adjudication. Upon a court finding of incompetency based on a developmental disability, the regional center determines eligibility for services under Division 4.5 of the Lanterman Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).~~

Item number: 29

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 4/10/19

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Transfer of Jurisdiction to Criminal Court (Amend Cal. Rules of Court, rules 5.766, 5.768, and 5.770; revise forms JV 060 INFO and JV-710)

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

Staff contact (name, phone and e-mail): Tracy Kenny (916) 263-2838, tracy.kenny@jud.ca.gov

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: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
u. SB 1391 (Lara) Juveniles: fitness for juvenile court (Ch. 1012, Statutes of 2018) Repeals the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court in a case in which a minor is alleged to have committed a specified serious offense when he or she was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.

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

SPR19-29

Title
Juvenile Law: Transfer of Jurisdiction to Criminal Court

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 5.766, 5.768, and 5.770; revise forms JV-060-INFO and JV-710

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary and Origin

Recent changes in the law on the transfer of jurisdiction to a criminal court for children 14 and 15 years of age require rule and form changes to be consistent with the new provisions. Senate Bill 1391 (Lara; Stats. 2018, ch. 1012) amends Welfare and Institutions Code section 707 to provide that a child must be at least 16 years of age to be considered for transfer of jurisdiction to criminal court unless the individual for whom transfer is sought was 14 or 15 at the time of the offense, the offense is listed in section 707(b), and the individual was not apprehended until after the end of juvenile court jurisdiction. To implement these age-related changes in the jurisdiction of the juvenile court, the Family and Juvenile Law Advisory Committee proposes amending three rules of court and one form pertaining to the transfer-of-jurisdiction process and an informational form to reflect the new provisions.

Background

On November 8, 2016, the people of the State of California enacted Proposition 57, the Public Safety and Rehabilitation Act of 2016, effective November 9, 2016. Proposition 57 amended existing law to require that the juvenile court consider a motion by the district attorney or other appropriate prosecuting officer to transfer the minor to the jurisdiction of the criminal court before a juvenile can be prosecuted in a criminal court. To that end, the proposition repealed Welfare and Institutions Code section 602(b),[1] which had provided that certain serious and

[1] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise specified.

violent felonies were to be prosecuted in criminal court, as well as section 707(d), which had authorized the district attorney to directly file an accusatory pleading involving certain minors in criminal court. In addition, the proposition eliminated a set of presumptions that applied in determining whether a case should be transferred and instead provided the court with broad discretion to determine whether the child should be transferred to a court of criminal jurisdiction, taking into account numerous factors and criteria.

SB 1391 further amended these provisions to limit the transfer of cases involving offenders ages 14 and 15 to those in which the alleged offender is not apprehended until after reaching adulthood and the offense is one listed in section 707(b). Since January 1, 2019 district attorneys have lodged challenges to the constitutionality of the law in at least 10 counties. Trial courts have ruled both in favor and against upholding the constitutionality of the statute, and thus, its status is in question. The committee is aware of this uncertainty and will monitor these legal challenges as it determines whether to implement the legislation via rule and form changes.[2]

The Proposal

To implement the new jurisdictional changes, the transfer rules and forms must be changed. In addition, the information form for parents whose children have been arrested must be updated to contain the accurate information about transfer of jurisdiction to criminal court and the lower limit on jurisdiction for children under 12 years of age in most cases.

Transfer rules 5.766, 5.768, and 5.770

The current rules of court governing the process for transfer of jurisdiction from juvenile to criminal court provide that transfer can occur when the subject of the petition is age 14 or 15 and is alleged to have committed an offense listed in Welfare and Institutions Code section 707(b) or is 16 years of age or older and is alleged to have committed a felony. These rules must be amended to clarify that a transfer petition may be considered only for those who were 14 or 15 years of age at the time of the offense when the individual who is the subject of the petition was apprehended after the end of juvenile court jurisdiction. In addition, the changes to section 707 require that code references be updated to reflect the new structure of the statute.

Transfer order form JV-710

Order to Transfer Juvenile to Criminal Court Jurisdiction (form JV-710), for optional use, would be revised to update item three to include the limitation on transferring individuals who were age 14 or 15 at the time of the offense to those situations in which apprehension of the subject of the petition occurred after the end of juvenile court jurisdiction, and to update item 4 to correct the statutory reference to 707(a)(2) and make it 707(a)(3), consistent with the changes enacted by SB 1391.

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[2] Sara Tiano, "Landmark Juvenile Justice Reform Challenged by California DAs," *Chronicle of Social Change*, Jan. 30, 2019.

Information form for parents (JV-060-INFO)

To provide accurate information to parents about when a juvenile case can be transferred to criminal court, *Juvenile Justice Court: Information for Parents (JV-060-INFO)* would be revised to reflect the limitations on transfer of people 14 and 15 years of age.

Alternatives Considered

Given the current legal uncertainty about whether SB 1391 is valid law, the committee considered postponing circulation of a proposal for comment until the underlying litigation is final. This approach, however, would leave the courts very far behind in having rules and forms that accurately reflect the law if SB 1391 is ultimately found to be a lawful amendment to section 707. For this reason, the committee is choosing to move this proposal forward in the process at the same time as the litigation progresses so that the council can implement accurate rules and forms in a timely manner, if appropriate.

Fiscal and Operational Impacts

The restrictions on the use of transfer to criminal court for juvenile offenders ages 14 and 15 will result in the filing of fewer transfer petitions for these youth and, thus, fewer hearings on those petitions. These impacts are the result of legislative changes. The revisions to JV-060-INFO may impose additional printing costs for any courts that need to replace existing copies of this form with the revised information form.

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 rule 5.770 or form JV-710 be modified in to *C.S. v. Superior Court*, 29 Cal.App.5th 1009 (2018), which held that the court must clearly articulate its findings for each criterion in issuing a transfer order?

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 four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 5.766, 5.768, and 5.770, at pages 5–6
2. Forms JV-060-INFO and JV-710, at pages 7–16
3. Link A: Senate Bill 1391, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1391*

Rules 5.766, 5.768, and 5.770 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A child who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

(1) The ~~child~~ individual was 14 or 15 years ~~or older~~ of age at the time of the alleged offense listed in section 707(b) and was not apprehended before the end of juvenile court jurisdiction.

(2) The child was 16 years or older at the time of the alleged felony offense.

(b)–(d) * * *

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)~~(2)~~(3). The report must also include any written or oral statement offered by the victim pursuant to section 656.2.

(b)–(c) * * *

Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

(a) * * *

(b) Criteria to consider (§ 707)

Following receipt of the probation officer's report and any other relevant evidence, the court may order that the child be transferred to the jurisdiction of the criminal court if the court finds:

(1) The child was 16 years or older at the time of any alleged felony offense, or the ~~child~~ individual was 14 or 15 years at the time of an alleged felony offense listed in section 707(b) and was not apprehended before the end of juvenile court jurisdiction; and

(2) The child should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)~~(2)~~(3) as provided in that section.

(c)–(h) * * *

JV-060-INFO Juvenile Justice Court: Information for Parents

Juvenile justice court (sometimes called *delinquency* court) is a court that decides if a child broke the law. The juvenile justice court helps to protect, guide, and rehabilitate children. And it helps keep the community safe.

This information sheet answers common questions that many parents have. It has three sections:

1. What Happens When Your Child Is Arrested
2. Your Child's Court Hearings and Orders
3. How to Keep Your Child's Juvenile Court Record Private

This form describes the juvenile justice court process. Some children who break the law and become involved with law enforcement or probation never need to go to court.

1 What Happens When Your Child Is Arrested

This section is about:

- What to expect when your child is arrested,
- What your child's legal rights are,
- What the *notice to appear* and the *petition* are,
- What it means to transfer your child to adult court, and
- What a *probation officer* does.

My child was arrested. What happens next?

Your child might be brought home or allowed to go home with you. Note that if your child is under 12 years of age, special rules apply and unless the arrest is for murder or certain serious sex crimes, your child will not be subject to a juvenile justice court, but will instead get services from one or more county agencies.

You will be given or mailed a notice to appear that tells you the date, time, and place you and your child need to go to the probation department or juvenile court. Talk to a qualified juvenile defense lawyer about your child's case. Many juvenile defenders offer free consultations.

Warning! You and your child *must* go to the meeting listed on the notice to appear even if no one contacts you again. Sometimes the meeting will be at probation. Sometimes the notice will order you to go to the juvenile court.

Your child might NOT be sent home immediately after the arrest.

If that happens, the officer who arrested your child may:

- Let your child go later.
- Take your child to juvenile hall and keep them there. This is called *in-custody detention.* If this happens, the arresting officer *must* try to contact you immediately to tell you where your child is and that your child is in custody.

What are my child's legal rights after arrest?

Your child has the right to make at least **two phone calls** within **1 hour** of being arrested.

- One call must be a *completed* call to a parent, guardian, responsible relative, or employer.
- The other call must be a *completed* call to a lawyer.
- If your child is currently in court-ordered foster care, your child may also be allowed to call a foster parent or social worker.

Will they tell my child about the right to remain silent?

Yes. Before any officer asks your child about what happened, the officer must first tell your child about your child's *Miranda* rights.

They will say:

"You have the right to remain silent. Anything you say will be used against you in court. You have a right to have a lawyer with you during questioning. If you or your parents cannot afford a lawyer, one will be appointed for you."

NOTE: If your child is 15 years old or younger and in custody, your child *must* talk to a lawyer—in person, by phone, or by videoconference (like Skype or FaceTime)—before answering any questions or giving up any rights. Your child cannot decide to answer questions or give up rights without first talking to a lawyer.

Does my child need a lawyer?

If a petition is filed, your child has a right to an *effective* and *prepared* court-appointed lawyer, who must have specific education and training in juvenile justice cases. Many parents hire a lawyer for their child as soon as the child is arrested.

Your child's lawyer represents only your child, not you, even if you are paying for that lawyer.

Do I need a lawyer for myself?

The court can order you to do things for your child and can order you to pay *restitution* to the *victim.* Some parents hire lawyers for legal advice about these issues.

NOTE: If you think you need your own lawyer and cannot afford to hire one, you can ask the court to appoint a lawyer for you. The court will decide whether to appoint you a lawyer. If it does, you might be ordered to pay back the cost of the lawyer if the court decides you can.

If my child is required to meet with probation, how can we get ready?

It's a good idea to get legal advice. A defense lawyer who specializes in juvenile justice cases can help you understand your child's rights and know what to expect. Try to find school records and other information that shows what you and your child are doing to get back on track.

At the meeting, the probation officer will talk with you and your child to figure out the best way to handle your child's case.

NOTE: At this meeting, the probation officer must tell you and your child about the *Miranda* rights. Any information you or your child share with the probation officer might be shared with the court or the prosecuting attorney (DA).

- If the alleged offense is not serious or it's the first time your child has been accused of breaking the law, the probation officer might just tell your child what they did was wrong (reprimand them) and let your child go.
- The probation officer might offer to let your child do a special *diversion program* instead of going to court. Each county has different rules and different programs. If you and your child agree to the program and your child does everything the program requires, the juvenile court does not need to get involved.
- If the offense is more serious, the probation officer might refer your child's case to the prosecuting attorney (DA). If the prosecutor decides to file charges, they will file a petition in juvenile court. That's what the rest of this form is about.

What happens if my child is taken to juvenile hall after getting arrested?

The probation officer can decide to:

- Keep your child in custody, or
- Let your child go home with you.

If the officer lets your child go, they may still:

- Ask the DA to file a petition, and
- Set limits on what your child is allowed to do while at home.

If the officer does *not* let your child go, a petition *must* be filed within 48 hours of the arrest. A detention hearing must be held the next day the court is in session. The courts are closed on Saturdays, Sundays, and holidays. You and your child *must* be given a copy of the petition. ***Exception:*** If your child is under 8, your child does not have a right to get a copy of the petition.

How long can they keep my child in juvenile hall?

The judge will decide at the detention hearing. The judge may release your child or keep your child in juvenile hall until the next hearing or until the whole case is over.

Can I visit my child in juvenile hall?

Usually, but before you go, contact the juvenile hall or the probation officer to find out when you can see your child.

What if the probation officer says a petition will be filed?

The petition states the things your child is accused of or charged with. It means your child's case will be sent to juvenile court. You have the right to receive a copy of the petition. If you have not received a copy of the petition, ask the probation officer or the court clerk for one.

The petition says your child did something against the law and asks the juvenile court to decide that what it says is true, but it does not prove anything.
Read the Petition Carefully! It is important to know what your child is accused of.

Are all petitions the same?

No. Each petition is tailored to the child and the alleged offense. There are two kinds of petitions:

A **601 Petition** is filed when a child has:

- Run away,
- Skipped school a lot,
- Violated a curfew, or
- Regularly disobeyed a parent or guardian.

These petitions are filed by the probation department at the juvenile court. If the court decides the charges are true, your child can become a "ward" of the court. That means the court will supervise your child, and your child must obey the court's orders.

A **602 Petition** is for a charge that would be a *misdemeanor* (like shoplifting or simple assault) or *felony* (like stealing a car, selling drugs, rape, or murder) if an adult had done it.

These petitions are filed by the prosecuting attorney (DA). If the court decides the charges are true, the judge can:

- Order your child put on probation,
- Make your child a "ward" of the court, and
- Order your child placed out of your home or committed (locked up).

NOTE: If your family is involved with the child welfare system, talk with your lawyer about what your child's arrest means for that case. Depending on everything that has happened, the court might decide that it's best for your child to stay in the child welfare system, to be supervised in the juvenile justice system, or to be supervised and served in both systems.

Can my child's case be moved to adult court?

In certain situations, the prosecuting attorney (DA) can ask the juvenile court to transfer your child's case to adult criminal court. If that happens, talk to your child's lawyer right away. Adult criminal cases are handled very differently and there may be very serious consequences for your child.

A case can be transferred to adult court only if your child is:

- 16 years old or older, and
- Charged with a felony.

What does the probation officer do?

Probation officers investigate children's situations and backgrounds and write reports for the court. They also supervise children to see if they are doing what the court has ordered them to do.

Why does the probation officer write a report?

The probation officer writes reports to give the court information about your child. The reports give the judge a description of your child's situation, including life at home and school, the current charge(s), and any previous arrests or petitions. It can also include:

- Statements from your child, you, your family, and other people who know your child well;
- A school report;
- A statement by the victim; and
- Recommendations about what the court should do if the judge finds that your child did what the petition says.

When does the judge see the reports?

The probation officer presents a report at the *detention hearing*, *disposition hearing*, and each *review hearing*. The judge uses the reports to help decide how to handle your child's case.

2 Your Child's Court Hearings and Orders

If a petition is filed in your child's case, you and your child will have to go to juvenile court. Each time you go to court is called a "hearing." You may have to go to several court hearings. This section is about:

- What happens at the different court hearings,
- What happens after the hearings,
- What if your child becomes a ward of the court, and
- What your duties and responsibilities as a parent are.

Get Ready for Court

How will I find out about court hearings?

If your child is in custody, both you and your child will get notice at least 5 days before the hearing. Someone will deliver it personally or by certified mail.

If your child is* not *in custody, both you and your child will get notice of each court hearing at least 10 days before the date of the hearing. Someone will deliver it personally, by first-class mail, or, if you agree, electronically.

Can I go to my child's court hearings?

Yes. In fact, the law says you *must* go. The judge decides what is best for your child. Depending on the charges, if you can show that your child will listen to you and follow your rules, and that you will hold your child accountable and be supportive at home, the judge may let your child go home with you.

How many times will we have to go to court?

You and your child will probably need go to court several times. There will be different kinds of hearings where the court makes different decisions. *See page 8 for a table of different hearing types.*

Do we have the right to an interpreter?

Your child has a right to an interpreter. You might have a right to one, too. Ask for one if you do not speak English well and don't understand everything being said in court.

Can I speak at the court hearings?

Yes. You may speak when:

- The judge asks you questions,
- You are called as a witness, or
- The judge gives you permission.

Who else speaks at the court hearings?

Your child's lawyer will speak for your child. The prosecuting attorney (DA) will speak for the government. The probation officer may speak for the Probation Department.

Can the victim go to the hearings?

Yes. A crime victim has a right to go to and speak at any court hearing. The victim and the victim's parents (if the victim is under 18) will get notice of the hearing. Do not talk to the victim unless your lawyer tells you to.

When is the first court hearing?

If your child is in custody, the first hearing, called the *detention hearing,* must take place on the court day immediately after the petition is filed. The probation officer or prosecuting attorney (DA) must tell you when and where the hearing will be. You will also get a copy of the petition. At this hearing, the court decides only whether your child can go home or needs to stay in custody until the next hearing.

If your child is* not *in custody, the first hearing, often called the *initial hearing,* must take place no more than 30 days after the petition is filed. In addition to the notice described earlier, you and your child will get a copy of the petition at least 10 days before the date of this hearing.

What is a jurisdiction hearing?

The jurisdiction hearing is when the judge decides if your child actually did what it says in the petition.

Here's what to expect:

- The judge will ask your child to *admit* or *deny* the charges listed in the petition.
- Your child's lawyer will consider the evidence and the possible outcomes, and then advise your child what to do.

- If your child *admits* the charges, they give up the right to a trial. The judge will decide that the petition is true.
- If your child *denies* the charges, there will be a trial (called a *contested hearing*). The court may hold the trial on another day to give your child's lawyer time to get ready.

What happens at the "trial"?

At the trial, the prosecuting attorney (DA) will show evidence to prove the charges. Then your child's lawyer will show evidence in your child's defense. The judge will consider all the evidence and decide if the charges are true "beyond a reasonable doubt."

If there is not enough proof to decide the charges are true, the judge will dismiss the case. If your child is in custody, she or he will be let go. If this happens, skip ahead to section 3 of this form.

If the judge decides the charges are true, there will be a *disposition hearing.* That's when the judge will say what your child will need to do and where your child will live. Sometimes this hearing is right after the jurisdiction hearing, but it can also be later on the same day or on another day.

If your child is in custody, the judge can order your child to stay in custody or be released until the disposition hearing.

> ***If you live in a different county***, the court can transfer the case to your county court for the disposition hearing. Ask your child's lawyer if that is a good idea for your child's case.

What happens at the disposition hearing?

The judge will decide what orders to make to protect and rehabilitate your child and to protect the community.

The judge might order your child to:

- Live at home and obey informal probation rules for up to six months.
- Live at home, be supervised by a probation officer, and obey rules set by the judge.
- Live at a relative's home, a foster family home, a private group home, or a residential treatment program; be supervised by a probation officer; and obey rules set by the judge.
- Spend time in a county camp, home, ranch, or hall (in custody) and on probation.
- Spend time in the Division of Juvenile Justice (DJJ) of the California Department of Corrections and Rehabilitation (in custody).

The judge may also order *you*, the parent, to get counseling or parent training or do other activities.

What if the judge puts my child on probation?

If your child is put on probation, the probation officer will supervise and work with your child to make sure that your child follows:

- The law,
- The court's orders, and
- All the rules of probation.

The probation officer will also encourage your child to do well in school and participate in job training, counseling, and community programs.

How often will the probation officer see my child?

Each case is different. The probation officer may meet with your child twice a week or only once a month.

What if the judge makes my child a *ward* of the court?

The juvenile law uses special language. Children who have committed offenses become wards of the court, but are not convicted. If your child becomes a ward of the court, that means the court is in charge of some of your child's care and conduct. The court does this to protect your child and the community.

What if the judge orders my child placed in foster care?

If the judge orders suitable out-of-home or foster placement, the probation officer may place your child in:

- An adult relative's home,
- An approved foster family home,
- A licensed private group home, or
- A residential treatment program.

What if the court sends my child to a secure county facility?

Most wards of the court who need secure confinement are sent to county facilities, like a ranch, camp, or juvenile hall, where they can be close to their families and local rehabilitative services. Ask the probation department about your child's program and how you can visit and stay in touch.

What if the court sends my child to DJJ?

Only wards who have committed the most serious violent actions or need intensive treatment are sent to DJJ. If the court sends your child to DJJ, visit www.cdcr.ca.gov/Juvenile_Justice/ to get more information about where your child might go and how you can visit and stay in touch.

If my child's case was moved to adult court, can my child be sent to adult prison?

Yes, but there are limits:

- Between the ages of 14 and 18, your child *must* stay at a juvenile facility (DJJ) *even if* sentenced to adult prison.
- If your child's sentence will end before your child turns 25, your child can stay at a juvenile facility (DJJ) for the entire sentence.
- If your child's sentence will last past the age of 25, your child can stay at DJJ until age 18, then be moved to an adult prison on the child's 18th birthday.

Important! If your child's case gets moved to adult court, talk to your child's lawyer right away.

Do I have to pay for what my child did?

The court may order you to pay fines or penalties.

If the court decides that the victim is entitled to restitution, you and your child are equally responsible for paying the victim back. *Restitution* is money that pays the victim to make up for the damage or harm your child caused. Restitution can pay the victim back for:

- Stolen or damaged property,
- Medical expenses, and
- Lost wages.

If restitution is not completely paid when your child's case is closed, it will become a *civil judgment,* which can affect your credit score.

Do I have to pay fees for services my child receives from the court or county?

No. You do not have to pay fees or pay back the cost of services, support, or an attorney *given to your child* by the county or court as part of this case.

But if you can afford it, you might have to pay back the cost of services, including an attorney, *given to you or other family members* by the county or the court.

What are my responsibilities as a parent?

Your parental duties do not end when the court gets involved. Your child may need you now more than ever.

If the judge decides the charges in the petition are true, you may be ordered to do things to:

- Help make up for harm your child caused, and
- Keep your child out of trouble in the future.

The court may order you to:

- Take classes,
- Go to counseling, or
- Do other activities that will help you and your child.

What if my child is in foster care or in custody?

Wherever your child goes, stay in touch as much as you can, however you can. Visit your child as often as you can. Support your child's programs and activities. Encourage your child to obey the court's orders and not to leave the placement without permission.

Find out what is happening in your child's life so that you can get ready for your child to return home. Learn how to make a protective and supportive environment for your child's return to school or work. Develop plans to hold your child accountable for their actions.

Where can I find parenting resources?

Contact your child's probation officer. Ask for referrals to community organizations, such as parents' groups or counseling services, that can help you. Your school district and local hospital or mental health department may also have useful programs.

If you have any questions that have not been answered, you may want to contact a lawyer for help.

3 How to Keep Your Child's Juvenile Court Records Private

Will anyone be able to look at my child's juvenile records?

Maybe. Although most juvenile court records are confidential, the law sometimes allows government officials to look at them.

However, in many cases the court will "seal" your child's juvenile records. Once the records are sealed, the law treats the arrest and court case as if they never happened. That means your child can truthfully say that your child does not have a criminal or juvenile record.

Exception: If your child wants to join the military or get a federal security clearance, your child may need to disclose information about the juvenile record.

How can we seal my child's juvenile records?

It depends on your child's situation.

Sealing at dismissal. If the juvenile court dismisses your child's case without making your child a ward of the court, the court must seal your child's records.

If the court does make your child a ward and later dismisses the case because your child has satisfactorily completed probation, the court will also seal your child's records and send your child copies of the sealing order and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation.*

If your child completes a probation diversion program, the probation department will seal those records and give notice to your child.

Sealing on request. If your child does *not* satisfactorily complete probation or the probation diversion program, the court will *not* dismiss the case and your child's records will not be automatically sealed. Your child can either:

- Ask the court to review the probation department's decision and order the records sealed, or
- Ask the court later to seal the records. (See form JV-595-INFO, *How to Ask the Court to Seal Your Records,* for more information.)

If your child is made a ward for an offense listed in Welfare and Institutions Code section 707(b), other than sex offenses requiring the child to register as a sex offender, your child can ask the court to seal the records:

- At age 21, if your child was sent to DJJ; or
- At age 18, if your child was not sent to DJJ.

Even sealed records can be viewed by the prosecuting attorney in some cases.

Sealing not allowed. If the court found that that your child committed a sex offense listed in Welfare & Institutions Code section 707(b) when your child was 14 or older for which your child needs to register as a sex offender, then the court cannot seal your child's records.

Can my child's juvenile court record be used against him or her as an adult?

Under the three-strikes law, some serious or violent felonies committed by a child at age 16 or 17 can be counted as strikes and used against the child in the future.

Court Hearings in Juvenile Justice Court

You and your child may have go to court several times. Each time you go is called a "hearing." Depending on your case, there may be different kinds of hearings to make different decisions. Here are some of them. Each time you have to go to court, you and your child (if 8 or older) will get a notice. The notice will tell you the date, time, and place to go.

Kind of Hearing	**What happens at this hearing**
Detention	The judge will decide if your child can go home or must stay in custody until the next hearing.
Transfer to Criminal Court	The juvenile court judge will decide if the case of a child who is 16 or older should be transferred to adult criminal court. Children under 16 cannot have their cases transferred to adult court. This hearing only happens for felony charges and only if the prosecuting attorney (DA) asks for the transfer.
Jurisdiction, part 1 (pretrial or settlement conference)	The judge, lawyers, and probation officer try to resolve the case without having a trial. The judge decides if your child actually did what the petition says. The judge will ask your child to *admit* or *deny* the charges listed in the petition. Your child's lawyer will consider the evidence and possible outcomes, and then advise your child what to do. If your child **admits** the charges, your child will give up the right to a trial. The judge will decide that the petition is true. If your child **denies** the charges, there will be a trial, usually a week or two later.
Jurisdiction, part 2 (trial)	At the trial, the prosecuting attorney will show evidence to prove the charges. Then your child's lawyer will present your child's defense. The judge will consider all the evidence and decide if the charges are true "beyond a reasonable doubt." – ***If there is not enough proof to decide the charges are true****,* the judge will dismiss the case. If your child is in custody, she or he will be let go. – ***If the judge decides the charges are true****,* there will be a disposition hearing.
Disposition	This happens *only* if the judge decides that the petition is true. The judge then decides what orders to make for your child. This hearing is often right after the jurisdiction hearing but can also be postponed to another day.
Hearings on Motions	The court decides legal questions that affect the case.
Review Hearings	This hearing provides a way for the court to check how your child is doing on probation or in placement. If your child is placed in foster care, the court must hold a review hearing at least once every six months.

GLOSSARY OF TERMS

Civil Judgment: A court order requiring a person to pay money to another person.

Detention hearing: The first court hearing after an arrest if the child is detained in custody.

Felony: An action that would be a serious crime if committed by an adult.

In-custody detention: Keeping a person in a secure place and not letting them go free or go home.

Juvenile delinquency: See *juvenile justice,* below.

Juvenile justice: The legal system designed to guide, rehabilitate, and protect children who break the law, and to keep the community safe. Also known as "juvenile delinquency."

Miranda: The U.S. Supreme Court case that requires law enforcement to tell persons detained in custody their rights before asking them questions.

Misdemeanor: An action that would be a less serious crime if committed by an adult.

Notice to appear: A paper telling you and your child to meet with a probation officer or go to juvenile court at a specific time and place.

Notice of hearing: A paper telling you the date, time, and place of a court hearing, and what will happen there.

Petition: A paper filed with the court that says your child did something against the law.

601 petition: A petition filed by the probation officer that accuses your child of something that's against the law for a child to do, for example, skipping school or breaking curfew.

602 petition: A petition filed by the prosecuting attorney that accuses your child of doing something that would be a crime if an adult did it.

Probation officer: A law enforcement officer who advises the court about the orders the child needs to protect and rehabilitate the child, and supervises the child as ordered by the court.

Restitution: Money owed to the victim of an act to make up for the damage or harm done.

Terms* or *terms and conditions of probation: Court orders that tell a person on probation what they must and must not do.

Ward: A child whom the court has decided to supervise because the child did something against the law.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
Case Name:		
ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION (Welfare and Institutions Code, § 707)		CASE NUMBER:

1. a. Date of hearing: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons present:
   ☐ Child ☐ Child's attorney *(name):*
   ☐ Deputy District Attorney *(name):* ☐ Other:

2. ☐ The court has read and considered ☐ the petition and report of the probation officer ☐ other relevant evidence.

3. **THE COURT FINDS** *(check one)*
   Welfare and Institutions Code section 707
   a. ☐ The child was 16 years old or older at the time of the alleged felony offense; or
   b. ☐ The individual was 14 or 15 years of age at the time of the alleged offense, the alleged offense is an offense listed in Welfare and Institutions Code section 707(b), and the individual was not apprehended before the end of juvenile court jurisdiction.

4. **THE COURT ALSO FINDS AND ORDERS**
   The court has considered all of the criteria in section 707(a)(3) and makes the following findings and orders on the motion to transfer jurisdiction to the criminal court for the reasons stated on the record:
   a. ☐ The transfer motion is denied. The child is retained under the jurisdiction of the juvenile court.
   The next hearing is on *(date):* at *(time):*
   for *(specify):*

   b. ☐ The transfer motion is granted. The prosecutor has shown by a preponderance of the evidence that the child should be transferred to the jurisdiction of the criminal court.
   (1) ☐ The matter is referred to the District Attorney for prosecution under the general law.
   (2) ☐ The child is ordered to appear in criminal court on *(date):* at *(time):*
   in Department:
   (3) ☐ The petition filed on *(date):* is dismissed without prejudice on the appearance date in (2).
   (4) ☐ The child is to be detained in ☐ juvenile hall ☐ county jail (section 207.1).
   (5) ☐ Bail is set in the amount of: $
   (6) ☐ The child is released ☐ on own recognizance ☐ to the custody of:

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
JV-710 [Rev. January 1, 2020]

ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION
(Welfare and Institutions Code, § 707)

Welfare and Institutions Code, §§ 207.1, 389(c), 707, 781(d);
Cal. Rules of Court, rules 5.504, 5.770
www.courts.ca.gov

Item number: 30

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 4/10/19

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

Staff contact (name, phone and e-mail): Tracy Kenny (916) 263-2838, tracy.kenny@jud.ca.gov

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: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
r. AB 2952 (Stone) Juvenile records: sealed records: access (Ch. 1002, Statutes of 2018)
Authorizes a prosecuting attorney to access, inspect, or utilize a juvenile record that has been sealed under the automatic sealing process in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.
t. SB 1281 (Stern) Juvenile records (Ch. 793, Statutes of 2018) Prohibits the destruction of a sealed juvenile record if an offense in that record has made the person subject to a firearms restriction until he or she turns 33 years of age, and authorizes a prosecuting attorney or the Department of Justice to inspect, to utilize those records for purposes related to the enforcement of that restriction, as specified.

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

SPR19-30

Title
Juvenile Law: Sealing of Records

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending one rule of court and revising one information form so that they conform to recently enacted statutory provisions concerning the sealing of juvenile records. The proposal would update the recently adopted rule and form, which implement sealing of records for cases sealed under Welfare and Institutions Code section 786 to include changes to that section that went into effect on January 1, 2019.

Background

In 2014, the Legislature enacted Welfare and Institutions Code section 786[1] to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and a number of subsequent bills, the Legislature has sought to provide access to those records for a variety of purposes. In 2018, Assembly Bill 2952 (Stone; Stats. 2018, ch. 1002) enacted an additional provision allowing access to the record by a prosecuting attorney when the attorney has reason to believe that the record may contain favorable or exculpatory information that must be disclosed to a defendant in a criminal case. These changes require that the court notify the person whose records have been sealed that the prosecutor's request is being considered so that the person may have an opportunity to respond to the request. It further requires the court to review the records and make a specific order with regard to access that protects the confidentiality of the person whose records are being accessed.

[1] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In 2017, the Court of Appeal heard a dispute regarding the potential conflict between section 786 and Penal Code section 29820. That latter statute prohibits juveniles with prohibits juveniles with sustained petitions for specified offenses, including firearms and domestic violence offenses, from owning or possessing a firearm before age 30. The court in *In re Joshua R.* (2017) 7 Cal. App. 5th 864, found that the statutory provisions could be reconciled absent legislative clarification by preserving the information needed to enforce the firearms prohibition at the Department of Justice while destroying the rest of the records. In 2018, the Legislature stepped in to clarify its intent by enacting Senate Bill 1281 (Stern; Stats. 2018, ch. 793), which provides that sealed records under section 786 for offenders subject to the firearms prohibition must be maintained beyond the offender's 30th birthday and destroyed on the date the offender attains age 33.

The Proposal

The committee proposes amending rule 5.840 of the California Rules of Court and revising form JV-596-INFO to conform to and implement the changes in section 786 enacted by AB 2952 and SB 1281.

Rule 5.840 amended to clarify dates for destruction

Rule 5.840 describes the procedures for sealing and dismissing petitions under section 786. Subdivision (d) of the rule currently states the parameters for the court to use when setting a destruction date for the records being sealed. This subdivision would be amended to include the new requirement that records that contain a sustained petition that is subject to Penal Code section 29820 should not be destroyed until the subject of the order attains the age of 33.

Form JV-596-INFO updated to include new provisions allowing access to sealed records

Sealing of Records for Satisfactory Completion of Probation (form JV-596-INFO) is an information form provided to all juveniles at the end of their cases when their records have been sealed under section 786. This form includes a bulleted list of all the occasions in which a sealed record may be accessed without requiring that the records be unsealed. The committee proposes adding two bullets to that list to explain that records may be accessed to enforce a firearms prohibition or to allow a prosecutor to comply with *Brady* obligations.

Alternatives Considered

The committee considered changing only the rule and leaving the information form incomplete, but determined that it would be misleading to include some of the bases for access to 786 records while remaining silent on others.

Implementation Requirements, Costs, and Operational Impacts

Courts may incur additional costs in ensuring that they set the appropriate destruction dates for records that must be maintained to enforce the firearms restrictions. Printing costs may be incurred by courts to provide form JV-596-INFO as required by law. Some courts may incur programming charges if electronic systems are used for the court orders. In addition, because the informational forms are available in other languages, there will be costs to translate the revised

forms. All of these impacts are a result of legislative changes and are necessary to make the rule and form legally accurate.

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 committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the prosecutor to comply with *Brady* obligations? If so, what specific requirements should be included?

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 four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.840, at page 4
2. Form JV-596-INFO, at pages 5–6
3. Link A: Assembly Bill 2952: *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952*
4. Link B: Senate Bill 1281: *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1281*

Rule 5.840 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.840. Dismissal of petition and sealing of records (§ 786)

(a)–(c) * * *

(d) Destruction of records

The court must specify in its order the date by which all sealed records must be destroyed, consistent with the following provisions:

(1) If the record to be sealed contains a sustained petition that makes the subject of the order ineligible to own or possess a firearm until attaining 30 years of age under Penal Code section 29820, the court must order the records destroyed on the date that the subject attains 33 years of age.

(2) If the record does not contain a sustained petition that results in firearms prohibitions for the subject as described in paragraph (1), the date for destruction of the records must be set consistent with this paragraph. For court records, this date may be no earlier than the date the subject of the order attains age 21 and no later than the end of the time frame ~~set forth~~ stated in section 781(d). For all other records, the date may be no earlier than the date the subject of the order attains age 18, and no later than the time frame ~~set forth~~ stated in section 781(d), unless that time frame expires ~~prior to~~ before the date the subject attains 18 years of age.

(e)–(f) * * *

JV-596-INFO Sealing of Records for Satisfactory Completion of Probation

In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision).

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), or if your case was otherwise dismissed after the petition was filed, in many cases, the court will have dismissed the petition(s) and sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see form JV-595-INFO** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offense such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when you were 14 or older unless it was not dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b), but unless you were found to have committed one or more of certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Facilities).

How will the court decide if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or misdemeanor crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines and fees must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see your sealed records?

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, the child welfare agency can look at your records to determine where you should live and what services you need.
- If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.
- If you are not allowed to have a gun because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.
- If a prosecutor thinks something in your record would be helpful to someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information. If this request is made, the court will let you know. You and your lawyer may object.

- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

  NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

Do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However,** the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

Can employers see your records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask about you.

Item number: 31

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Rules and Forms for Minor to Marry or Establish a Domestic Partnership

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

Staff contact (name, phone and e-mail): Gabrielle Selden -(415) 865-8085 - gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The proposed new rule and revised forms in the proposal are necessary to maintain their legal accuracy, in light of recent legislation, Senate Bill 273, which creates additional responsibilities for Family Court Services professionals and judicial officers when a minors requests an order to marry or establish a domestic partnership.

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

SPR19-31

Title
Family Law: Rule and Forms for Minor to Marry or Establish a Domestic Partnership

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes adopting a new rule, approving a new form, and revising two forms to implement the requirements of Senate Bill 273 (Hill; Stats. 2018, ch. 660) relating to minors who seek a court order to marry, establish a domestic partnership, or both.

Background

In September 2018, the Legislature enacted SB 273, amending several Family Codes relating to marriage and domestic partnerships involving minors. Amended Family Code sections 297.1 and 304 now require that Family Court Services (FCS) do the following, unless the minor is 17 years of age and has achieved a high school diploma or a high school equivalency certificate:

- Separately interview the parties intending to marry or establish a domestic partnership;
- Interview at least one of the parents or the guardian of each party who is a minor, if applicable;
- Prepare and submit to the court a report of any potential force, threat, persuasion, fraud, or coercion or duress by either of the parties or their family members relating to the intended marriage or domestic partnership; and

- Report to the court recommendations for granting or denying permission to the parties to marry or establish a domestic partnership.

In addition, if Family Court Services is required to interview the minor and write a report, Family Code sections 297.1 and 304 require that the court:

- Separately interview the parties in camera before making a final determination; and
- Consider whether there is any evidence of coercion or undue influence on the minor.

The court must also:

- Provide the minor with specific information on issuing an order granting permission to marry or establish a domestic partnership; and
- Document certain statistical data of the parties on the order.

The Proposal

To implement the requirements of SB 273, the committee proposes adopting rule 5.448, approving form FL-912, and revising forms FL-910 and FL-915, as follows:

Rule 5.448. Minor's Request to Marry or Establish a Domestic Partnership

The new rule would:

1. Include the statutory basis for these types of actions;
2. Indicate that the rule applies to Family Court Services in all courts, even those that adopt a confidential child custody mediation model and do not normally write recommendations;
3. Identify the mandatory forms used in these cases;
4. Require FCS to provide a copy of the report and recommendations to the parties;
5. Require FCS to protect the confidentiality in the storage and maintenance of the report and recommendations; and
6. Include the responsibilities of the judicial officers to make findings in the case and determine whether to grant or deny the minor's request.

The text of the proposed rule is on pages 8–11.

Request of Minor to Marry or Establish a Domestic Partnership **(form FL-910)**

This form would be revised at items one and two to include an optional entry for the parties to identify their gender (male, female, or nonbinary). While the parties' age is required to be included on the order, the court seeks specific comment about whether the court should include check boxes on the form to gather data about the parties' gender. A new item would be included on the form titled "Minor's Age and Education." This would allow the parties to identify if the minor is exempt from the interview process. The two questions per party would be if (1) the minor is 17 years of age, and (2) the minor has achieved a high school diploma or a high school

equivalency certificate. This information on the form would help the court clerk identify early in the process if the case is one that does or does not require an appointment with Family Court Services.

Item five, "Written Permission" would be revised as follows:

- The title would be changed to "Written Consent" to align with the language in Family Code sections 297.1 and 304.
- The paragraph under the heading would be revised to specify when the written consent of a parent or guardian is required by statute.
- The references to "mother" and "father" would be stricken and replaced with "parent," "parent with legal authority," and "legal guardian," where appropriate.
- Several check boxes would be inserted to allow for cases in which a minor has more than one parent or legal guardian.

***Consent for Minor to Marry or Establish a Domestic Partnership* (form FL-912)**
A minor must provide written consent to marry from a parent or legal guardian, unless the minor does not have a parent or legal guardian who is capable of consenting. This optional new form would provide consistency in the presentation of the written consent to the court. Form FL-912 could be completed by a minor's parent with legal authority to consent or a legal guardian, and filed by the parties with the initial request or after form FL-910 is filed. Having an optional form would not preclude the minor from filing a different document; however, the rule would indicate that any other document filed must contain the same information that is included in form FL-912.

***Order on Request to Marry or Establish a Domestic Partnership* (form FL-915)**
The committee proposes numerous changes to the items in this form, as follows:

Item 1. Information about the parties' gender and age would be added to items one and two.

Item 4. A new section four ("Review") would be added to identify the items that the court considered in the case. These items include those that are mandated by statute (the request, the written permissions, FCS's written report of recommendations, and the court's own private interviews).

Item 5. Another new section ("Findings") would include the findings that the court must make relating to the minor's request. These would include (1) whether or not there is any evidence of force, threat, persuasion, fraud, or duress on the minor relating to the intended marriage or domestic partnership; (2) whether the minor has a parent or legal guarding capable of consenting; or (3) whether the minor has the ability to pay for counseling, if applicable.

Item 7. The section for orders would be reformatted and revised to include specific statutory language relating to counseling.

As a final part of the order on page two, the form would include language to inform the parties of the next steps after the court makes the order. It would also include a section to address whether or not there is a waiting period before the parties can request a marriage license or file a declaration of domestic partnership.

The most significant change to the form would be to expand it from one to five pages to include the notices that the parties must receive from the court order under SB 273. The title of the form would, therefore, be changed to *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915). The notices on pages two through five would include the following:

- The rights and responsibilities of an emancipated minor;
- The circumstances under which a marriage or domestic partnership may be determined by a court to be void or voidable and adjudged a nullity, and the procedure for obtaining such an order;
- The procedure for legal separation or divorce;
- The telephone numbers for the National Domestic Violence Hotline and the National Sexual Assault Hotline;
- Information about unemancipated minors, including the following:
  (1) The conditions under which an unemancipated minor may leave home and seek to remain in a shelter or live separately from parents or guardians, and whether consent of a parent is required to remain away from the home of the parent or guardian;
  (2) The rights of an unemancipated minor to apply for a protective or restraining order to prevent abuse; and
  (3) The rights of an unemancipated minor to enter into contracts, including contracts for legal services and mental health counseling.

Mandatory request and order forms

The committee proposes that forms FL-910 and FL-915 be changed to mandatory forms. Due to the extensive statutory changes relating to a request for a minor to marry or establish a domestic partnership, the committee believes it is necessary to implement the request and order forms on a statewide basis. This would be the most effective way of helping the courts comply with the requirements of Family Code sections 297.1 and 304. A mandatory order and notices to minor form would provide consistency in the orders and the delivery of information statewide to the parties. It would also centralize the process for updating the language in the future, if necessary. It should be noted that the changes to forms FL-910 and FL-915 are not highlighted in the forms themselves to increase the ability to read and review them, especially if they are photocopied.

Alternatives Considered

Notices to minor

The committee considered how to implement the requirement of SB 273 that the minor receive specific notices after the court makes an order in the case. The committee considered either developing a separate Judicial Council form for the notices or including the notices to minor with

the court order. The committee decided to propose that the notices be included with the court order. This would eliminate confusion about whether it would become the responsibility of the judicial officer, the court clerk, or Family Court Services to ensure that the minor receives the notices.

New rule of court

The committee considered whether there was a need for a rule of court to implement SB 273. The committee decided that there was a need to provide guidance to the parties and to the court about implementing the new laws. For example, the parties and the courts would need to know the following: the request and order form in these cases would be mandatory; Family Court services would be required to make certain recommendations to the court, even if Family Court Services does not normally submit recommendations to the court with respect to other proceedings, such as those relating to child custody and visitation (parenting time); and Family Court Services must provide a copy of the written recommendations to the parties, even though SB 273 is silent on this matter. Thus, the proposed new rule would not simply recite the language of the new and amended Family Codes.

Further, because the process under SB 273 is not a "mediation" within the meaning of the Family Code, the committee considered but did not propose amending rule 5.210 (Court-connected child custody mediation) to include new provisions to address SB 273's requirements.

Terminology in the proposed new rule and forms

Although Family Code sections 297.1, 303, and 304 use the terms "parent" and "guardian" and provide that, if applicable, the minor must have a parent's or a guardian's written consent to marry or establish a domestic partnership, the committee considered that these terms may need clarification in the proposed forms. This is because a "parent" or "guardian" may not actually have the legal authority to consent to the minor's request. For example, a court order that grants "sole legal custody" to a parent gives only one of the child's parents the legal authority to consent to any issue relating the child's health, safety, and welfare. Thus, in this situation, the other parent would not have the legal authority to consent to the minor's request to marry or establish a domestic partnership. On the other hand, a court order of "joint legal custody" enables each of the minor's parents to consent to the child's marriage or domestic partnership. With respect to the term "guardian," minors may apply this term liberally to a person in their lives who is not related to them. It takes a court order for a person to become a minor's legal guardian. For the foregoing reasons, the committee decided to replace the terms "parent" and "guardian" with "parent with legal authority" and "legal guardian," where appropriate in proposed form FL-912 and revised forms FL-910 and FL-915.

Confidentiality

The committee considered whether the case files for these actions should be confidential and whether the written report from Family Court Services should be kept in the confidential portion of the family law file. In other proceedings, such as those involving psychological evaluations of children to determine child custody or visitation rights, Family Code section 3025.5 requires that

the evaluation be kept confidential and not be disclosed, except to those persons or entities specifically enumerated in the statute. Although members generally believed that the reports from Family Court services should be confidential, SB 273 did not provide the same statutory protections for Family Court Services' written reports in actions for minors seeking to marry or establish a domestic partnership, even though the reports could potentially contain information about the minor's psychological condition or capacity to consent to the intended marriage or domestic partnership.

To address the concern for privacy at this time, the committee has proposed including language in rule 5.448(c)(5) to require that Family Court Services protect party confidentiality in the storage and disposal of records and any personal information gathered during the interviews, as well as in the management of reports containing recommendations about the minor's request to marry or establish a domestic partnership.

Education and training requirements

The committee considered including a subdivision in the proposed new rule to address specific education and training requirements for Family Court Services professionals who interview the minors in these cases and write recommendations for granting or denying the minor's request to marry or establish a domestic partnership. The committee also considered proposing amendments to the education and training requirements for mediators under rule 5.210 of the California Rules of Court.

Although the committee understands that interviewing minors and specifically assessing for coercion, duress, or undue influence on the minor may currently be outside of the scope of the training these court professionals have received, the committee decided not to propose additional educational components in the new or existing rules at this time. Instead, the committee directed that staff from the Center for Families, Children & the Courts provide courses and introduce new curricula at upcoming Family Court Services statewide conferences, remote monthly trainings for FCS personnel, and the annual institute for new FCS personnel.

Collection of data regarding gender

The committee considered whether or not to revise the forms to include a query about the parties' gender. Family Code sections 297.1 and 304 only require that the court order document the age of the parties in this type of action. The current forms already include an item for the parties to provide their age. SB 273 only requires that the court order include information about the parties' gender if the parties provide that information

The committee considered that the *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910) could be one method of obtaining information about gender. The committee also considered that form FL-910 would not be the only method for the Secretary of State and the State Registrar to collect the data. The minor has to present the family court order (form FL-915) when applying for a marriage license or a declaration of domestic partnership.

Thus, the agencies responsible for those forms could revise their forms to ask the parties to provide information about their gender if they so choose.
The committee decided to revise the request and order forms to illustrate where information about gender would appear on the request and order, and seek specific comment on this issue.

Fiscal and Operational Impacts

The statutory changes would increase the workload of Family Court Services mediators and child custody recommending counselors who do not already interview minors and their parents or guardians in these cases. Specific training might be needed to help them assess any potential force, threat, persuasion, or duress by either of the parties or their family members relating to the intended marriage or domestic partnership. The mandated changes would also increase the responsibilities of judicial officers who must review the FCS reports and interview the minors in chambers before making a determination on the request to marry or establish a domestic partnership or marriage. However, because courts report that there are relatively few of these types of filings each year, the overall operational impact on the courts may not be significant.

Request for Specific Comments

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

- Should *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910) include an item for the parties to identify their gender? Family Code sections 297.1 and 304 only require the family court to indicate the minor's gender on the order if the parties provide this information. Please include the rationale for your answer.
- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.448, at pages 8–11
2. Forms FL-910, FL-912, and FL-915, at pages 12–19
3. SB 273 (Hill; Stats. 2018, ch. 660), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB273*

Rule 5.448 of the California Rules of Court would be adopted, effective January 1, 2020, to read:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 19. Minor Marriage or Domestic Partnership

Article 1. General Provisions

Rule 5.448. Minor's Request to Marry or Establish a Domestic Partnership

(a) Application

(1) This rule implements Family Code sections 297.1, 303, and 304, allowing a person under the age of 18 years of age (a minor) to seek a court order for permission to marry or establish a domestic partnership.

(2) The responsibilities of Family Court Services under (c) apply equally to courts that adopt a confidential child custody mediation program, recommending child custody counseling, or a tiered/hybrid program.

(3) For the purpose of this rule, the terms "parent" and "parent with legal authority" are used interchangeably.

(b) Required initial filings

(1) The minor and the minor's proposed spouse or domestic partner must complete and file with the court clerk a *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910).

(2) Unless the minor has no parent or legal guardian capable of consenting, each minor must file, in addition to form FL-910, the written consent from a parent with legal authorization to provide consent or a legal guardian. *Consent for Minor to Marry or Establish a Domestic Partnership* (form FL-912) may be used for this purpose.

(c) Responsibilities of Family Court Services

Unless the minor is 17 years of age and has achieved a high school diploma or a high school equivalency certificate, Family Court Services must:

(1) Interview the parties intending to marry or establish a domestic partnership.

(A) The parties must initially be interviewed separately; and

(B) The parties may subsequently be interviewed together.

(2) Interview at least one of the parents or the legal guardian of each party who is a minor, if the minor has a parent or legal guardian. If more than one parent or legal guardian is interviewed, the parents or guardians must be interviewed separately.

(3) Inform the parties that Family Court Services must:

(A) Prepare a written report, including recommendations for granting or denying the parties permission to marry or establish a domestic partnership;

(B) Provide the parties and the court with a copy of the report; and

(C) Submit a report of known or suspected child abuse or neglect to the county child protective services agency if Family Court Services knows or reasonably suspects that either party is a victim of child abuse or neglect.

(4) Prepare a written report, which must:

(A) Include an assessment of any potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members relating to the intended marriage or domestic partnership;

(B) Include recommendations for granting or denying the parties permission to marry or establish a domestic partnership; and

(C) Be submitted to the parties and the court.

(5) Protect party confidentiality in:

(A) Storage and disposal of records and any personal information gathered during the interviews; and

(B) Management of written reports containing recommendations for either granting or denying permission for a minor to marry or establish a domestic partnership.

(d) Responsibilities of the judicial officer

In determining whether to issue a court order granting permission for the minor to marry or establish a domestic partnership:

(1) The judicial officer must:

(A) If Family Court Services is required to interview the parties, do the following before making a final determination:

(i) Separately and privately interview each of the parties; and

(ii) Consider whether there is any evidence of coercion or undue influence on the minor.

(B) Complete *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915).

(2) The judicial officer may order that the parties:

(A) Appear at a hearing to consider whether it is in the best interest of the minor to marry or establish a domestic partnership.

(B) Participate in counseling concerning the social, economic, and personal responsibilities incident to the marriage or domestic partnership before the marriage or domestic partnership is established. The judicial officer:

(i) Must not require the parties to confer with counselors provided by religious organizations of any denomination;

(ii) Must consider, among other factors, the ability of the parties to pay for the counseling in determining whether to order the parties to participate in counseling;

(iii) May impose a reasonable fee to cover the cost of any counseling provided by the county or the court; and

(iv) May require the parties to file a certificate of completion of counseling before granting permission to marry or establish a domestic partnership.

(e) Waiting period

After obtaining a court order granting a minor permission to marry or establish a domestic partnership, the parties must wait 30 days from the date the court made the order before filing a marriage license or filing a declaration of domestic partnership. This waiting period is not required if the minor is:

(1) 17 years of age and has a high school diploma or a high school equivalency certificate; or

(2) 16 or 17 years of age and is pregnant or whose prospective spouse or domestic partner is pregnant.

FL-910 Request of Minor to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

NOT APPROVED BY THE JUDICIAL COUNCIL 2-14-2019

(1) Minor Requesting Court Order

Name: _____ Date of birth: _____

Gender *(Optional):* ☐ Male ☐ Female ☐ Nonbinary

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

(2) Minor's Proposed Spouse or Domestic Partner

Name: _____ Date of birth: _____

Gender *(Optional):* ☐ Male ☐ Female ☐ Nonbinary

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed:

Case Number:

(3) Your Lawyer's Information *(if you have a lawyer):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

Telephone number: _____ E-mail Address: _____

(4) Request

We request that the court grant us permission to ☐ marry. ☐ establish a domestic partnership.

(5) Minor's Age and Education

a. Is the person in (1) 17 years of age? ☐ yes ☐ no

b. Does the person in (1) have a high school diploma or a high school equivalency certificate? ☐ yes ☐ no

c. Is the person in (2) 17 years of age? ☐ yes ☐ no

d. Does the person in (2) have a high school diploma or a high school equivalency certificate? ☐ yes ☐ no

(6) Written Consent

Unless the minor has no parent or guardian with the legal authority to consent (or capable of consenting), each person under 18 years of age must file with the request the written consent of a parent with legal authority or a legal guardian for the minor to marry or establish a domestic partnership. Form FL-912 may be used for this purpose.

Person in (1) *(Check all that apply and specify name of the "parent with legal authority" or "legal guardian"):*

a. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

b. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

c. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

d. ☐ I am ☐ not a minor ☐ a minor, but have no parent, parent capable of consenting, or legal guardian.

Person in (2) *(Check all that apply and specify name of the "parent with legal authority" or "legal guardian"):*

a. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

b. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

c. ☐ parent with legal authority ☐ legal guardian *(specify name):* _____

d. ☐ I am ☐ not a minor ☐ a minor, but have no parent, parent capable of consenting, or legal guardian.

Case Number:

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

Date: _____

▶ _____
Person in (1) signs here

Date: _____

▶ _____
Person in (2) signs here

When you file this request, the court must determine whether to grant permission for you to marry or establish a domestic partnership.

1. Unless the minor is 17 years of age and has achieved a high school diploma or high school equivalency certificate, the law requires that all of the following be completed *before* the court can make a decision in your case:

a. **Family Court Services must:**

(1) Interview the parties separately.

(2) Interview at least one of the parents or the guardians of each party who is a minor if the minor has a parent or guardian who has legal authority to consent to the minor's intended marriage or domestic partnership.

If the minor has more than one parent or guardian with legal authority, Family Court Services must interview them separately.

(3) Prepare a written report based on the information collected from the interviews and give it to the court.

b. **The judge must:**

(1) Review the report and recommendations written by Family Court Services;

(2) Interview each of the parties separately and privately; and

(3) Make an order on the request to marry or establish a domestic partnership.

2. Court Order

The court will make an order on the party's request using *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915). Important notices are included with the order. You may want to review the notices before you file the petition.

3. Order for counseling

If the court considers it necessary, and the court determines that the parties can afford it, the law allows the judge to require the parties to participate in counseling before obtaining a marriage license or establishing a domestic partnership. As to this order:

a. The counseling must relate to the social, economic, and personal responsibilities incident to marriage or domestic partnership.

b. The court must consider, among other factors, the ability of the parties to pay for counseling before ordering the parties to attend counseling.

c. The court cannot order the parties to participate in counseling that is provided by religious organizations of any denomination.

d. The court may require the parties to pay a reasonable fee to cover the cost of any counseling provided by the county or the court.

4. Data collection

Gender: Parties are not required to specify their gender on form FL-910. If the parties volunteer this information, the court must include it in the order.

Age: The parties must specify their ages on form FL-910. By law, the court order must include this information in the order.

The judge does not use the age and gender information in form FL-910 to make the order.

The parties' ages are reported to the State Registrar or the Secretary of State to allow them to document and update each year the number of recorded marriages and domestic partnerships in which one or both of the parties were minors at the time the parties married or registered the domestic partnership.

FL-912 Consent for Minor to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

NOT APPROVED BY THE JUDICIAL COUNCIL 2-14-2019

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) Minor Requesting Court Order

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

(2) Minor's Proposed Spouse or Domestic Partner

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

(3) Minor's Parent With Legal Authority or Legal Guardian

Name: _____

I am the *(check one):* ☐ parent with legal authority ☐ legal guardian

of the minor in *(check one):* ☐ (1) ☐ (2)

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Use a separate form for each parent with legal authority or legal guardian who is giving written consent to the minor's intended marriage or domestic partnership.

(4) Consent

a. I consent to my child's intended *(check all that apply):* ☐ marriage ☐ domestic partnership.

b. I understand that Family Court Services may be required to interview me before the court makes an order in this case. I authorize Family Court Services to contact me using the information provided in (3).

c. ☐ Other *(specify):*

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

Date: _____

▶ _____

Person in (3) signs here

FL-915 Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

2-14-2019

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 Minor Requesting Court Order

Name: _____ Date of birth: _____

Gender: ☐ Male ☐ Female ☐ Nonbinary ☐ Not provided

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

2 Minor's Proposed Spouse or Domestic Partner

Name: _____ Date of birth: _____

Gender: ☐ Male ☐ Female ☐ Nonbinary ☐ Not provided

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

3 Your Lawyer's Information *(If you have a lawyer):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

Telephone number: _____ E-Mail Address: _____

4 Review. The court has considered:

a. The *Request of Minor to* ☐ *Marry* ☐ *Establish a Domestic Partnership*

b. The written consent from each minor's parent with legal authority or legal guardian.

c. ☐ The written report submitted to the court by Family Court Services.

d. ☐ The court's own separate and private interview of the parties.
4c and 4d do not apply if the minor is 17 years of age and has achieved a high school diploma or a high school equivalency certificate.

e. ☐ The ability of the parties to pay for counseling.

f. ☐ Other *(specify):* _____

5 Findings. The court makes the following findings:

a. There ☐ is ☐ is not evidence of force, threat, persuasion, fraud, coercion, or duress on the minor relating to the intended marriage or domestic partnership.

b. ☐ The minor in ☐ 1 ☐ 2 does not have a parent, parent capable of consenting, or a legal guardian.

c. ☐ This couple ☐ has ☐ does not have the ability to pay for premarital or prepartnership counseling.

d. ☐ Other *(specify):* _____

6 ☐ Hearing Required

The court is considering whether it is in the best interest of the person or persons under 18 years of age to marry or establish a domestic partnership at this time. The matter is scheduled for a hearing on

Hearing Date → Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Dept./Rm. or Address: _____

This is a Court Order.

Case Number:

7 The court makes the following orders:

a. ☐ This couple may get married if they meet all other requirements to get a marriage license.

b. ☐ This couple may establish a domestic partnership if they meet all other requirements to file a Declaration for Domestic Partnership with the Secretary of State.

c. ☐ After considering the ability of the couple to pay for counseling, the court orders that this couple must go to counseling to learn about the social, economic, and personal responsibilities of being in a marriage or domestic partnership.

☐ This couple must show a certificate of completion of counseling in c. before permission is granted.

d. ☐ This couple may not get married or establish a domestic partnership at this time.

e. ☐ Other *(specify):*

8 ☐ Other *(specify):*

Date:_____

_____
Judicial Officer

What to do with this order.

1 **File it with the court.** This order must be filed with the clerk of the court where your case is filed.

2 **Get certified copies.** Make copies of the signed order and ask the clerk of the court where your case is filed to certify the copies.

3 **Apply for the license to marry or register a domestic partnership.**

For marriages, present a certified copy of the order to the county clerk at the time you apply for the marriage license. For domestic partnerships, present the certified copy of the order to the Secretary of State (with the Declaration of Domestic Partnership) at the time the domestic partnership is registered.

4 **Keep copies.** Keep copies of the order and other documents for your records.

Is there a waiting period before we can request a marriage license or file a declaration of domestic partnership?

YES — The parties MUST wait 30 days from the date the court made the order granting permission to marry or establish a domestic partnership before filing a marriage license or filing a declaration of domestic partnership.

NO — There is NO waiting period if a minor in the relationship is:

17 years of age and has a high school diploma or a high school equivalency certificate.

OR

16 or 17 years of age and is pregnant or whose prospective spouse or domestic partner is pregnant.

This is a Court Order.

1 Where to get help

This notice gives you only basic information and is not legal advice. If you want legal advice, ask a lawyer for help. You may:

Contact the family law facilitator or self help center in your court for information, court forms, and referrals to local legal resources. For more information, see *courts.ca.gov/courtresources.*

Find a lawyer through a certified lawyer referral service on the State Bar of California's website: *calbar.ca.gov/LRS* or by calling 866-442-2529 (toll-free).

Hire a private mediator. For more information about court and private services, see *courts.ca.gov/selfhelp-adr.htm.*

Find information on the California Courts Online Self-Help Center website: *courts.ca.gov/selfhelp.*

Find free and low-cost legal help (if you qualify) at *lawhelpcalifornia.org*.

Find information at your local law library or public library.

National Domestic Violence Hotline

For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline at:

1-800-799-7233 (TDD: 1-800-787-3224).

It's free and private. They can help you in more than 100 languages.

National Sexual Assault Hotline

Anyone affected by sexual assault, whether it happened to you or someone you care about, can find support by contacting the National Sexual Assault Hotline at:

1-800-656.HOPE (4673).

You can also visit *rainn.org* to receive online support by confidential online chat.

2 What it means to be an emancipated minor

If you are under the age of 18 years and have an order allowing you to marry or register a domestic partnership, you are considered to be an emancipated minor when you have entered into a valid marriage or domestic partnership.

When you are emancipated, you are no longer under the care and control of your parents or legal guardian. If you are a dependent or ward of the juvenile court, your legal status also changes when you are emancipated. This affects certain rights relating to you and your parents or legal guardians. For example,

- You give up the right to financial support from your parents or legal guardians.
- Your parents or legal guardians lose the right to control your finances, and they are no longer required to support you.

3 Rights of an emancipated minor

As specified in Family Code sections 7050 to 7052, as an emancipated minor, you have the right to:

- Decide where you want to live;
- Enroll yourself in school;
- Apply for a work permit;
- Make or revoke a will;
- Keep the money you earn;
- Decide how to spend the money you earn;
- Enter into contracts, get a bank loan or credit card;
- File a lawsuit or be sued in your own name ;
- Consent to your own medical, dental and psychiatric care; and
- Buy, sell, lease, exchange, or transfer any interest you have in real estate or personal property.

Case Number:

4 Other rights of an emancipated minor

With respect to shares of stock in a domestic or foreign corporation, a membership in a nonprofit corporation, or other property held by an emancipated minor, you may do all of the following:

- Vote in person, and give proxies to exercise any voting rights, with respect to the shares, membership, or property;
- Waive notice of any meeting or give consent to the holding of any meeting; and
- Authorize, ratify, approve, and affirm any action that could be taken by shareholders, members, or property owners.

5 Limits on the rights of an emancipated minor

Even if you have been declared an emancipated minor:

- You must still attend school as required by law.
- If you are charged with a crime, your case will be in the Juvenile Court.
- Labor laws relating to minors still apply to you and prevent you from performing dangerous kinds of work.
- You must still meet the age requirements in California for obtaining a driver's license.
- You cannot consent to sexual intercourse with anyone who is not your legal spouse or domestic partner. This means that any other adult who has sex with an emancipated minor can still be prosecuted for unlawful sexual intercourse with a minor.

6 Alternatives to emancipation

As an alternative to emancipation, you can consider:

- Family counseling to help improve your relationship with your parents while living with them.
- Obtaining an order to make someone you trust your legal guardian until you become 18 years old.
- Getting help from public or private agencies in your area.
- Making an informal agreement with your parents that allows you to live with someone else. Note: The law allows the caregiver to enroll you in school and obtain basic medical care for you by completing a Caregiver's Authorization Affidavit, even if the caregiver does not have a court order for child custody. The affidavit can be found online at *http://www.courts.ca.gov/documents/caregiver.pdf*

7 Rights of *un*emancipated minors

A minor who is 12 years or older may file for a domestic violence restraining order in the minor's own name.

A minor may consent to the matters provided in Family Code sections 6920 to 6929, subject to certain limitations, and the consent of the minor's parent or legal guardian is not necessary. For example:

Mental health treatment, outpatient counseling, emergency residential shelter service

A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services or other supportive services on a temporary or emergency basis. Both of the following requirements must be satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

Other treatment

(1) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem, prevention of a sexually transmitted disease, or prevention or treatment of pregnancy.

(2) A minor may make a contract in the same manner as an adult. However, the contract can be disaffirmed if the law so permits.

(3) Minors may never (A) give a delegation of power (B) contract relating to real property, or (C) contract relating to personal property not within the minor's immediate possession or control.

8 Annulments: void marriage or domestic partnership

The law describes circumstances in which a marriage or domestic partnership is void (not legally valid) from the very beginning.

Bigamous relationship: One or both people are already married to (or in a registered domestic partnership with) someone else. For more information, see Family Code section 2201.

Incestuous relationship: This is a marriage or partnership between two people who are close blood relatives. See Family Code section 2200.

9 Annulments: voidable marriage or domestic partnership

Family Code section 2210 describes circumstances in which a marriage or domestic partnership can be declared invalid (or voidable). The following must have taken place at the time the parties married or registered the domestic partnership:

Under age: The person filing for annulment was under 18 years old.

Unsound mind: Either party was unable to understand the nature of the marriage or domestic partnership, including the obligations that come with it.

Fraud: Either party decided to marry or register the domestic partnership as a result of fraud. The party was deceived about something vital to the relationship that directly affected the decision to marry or become a domestic partner. Some examples are hiding the inability to have children or just wanting to get a green card.

Force: Either party was forced to consent.

Physical incapacity: One of the parties was physically incapable of "consummating" the relationship (having sexual intercourse) and the incapacity appears to be "incurable."

Prior existing marriage or domestic partnership: The marriage or domestic partnership took place after the former spouse or domestic partner was absent for five years and not known to be living, or was thought to be dead.

Note: See Family Code section 2211 for the time limits for filing to nullify a voidable legal relationship.

10 How to annul a marriage or domestic partnership

There are a number of forms and steps to complete when filing for annulment. For information and procedures for filing and responding to an annulment case that is filed in family court, you can:

- Visit the California Courts Online Self-Help Center at *www.courts.ca.gov/1037.htm#legal.*
- Talk to a lawyer. For help finding a lawyer, go to *www.courts.ca.gov/selfhelp-findlawyer.htm.*
- Visit your local court's self-help center at *www.courts.ca.gov/selfhelp-selfhelpcenters.htm.*

11 How to end a marriage, domestic partnership, or both

Dissolution (Divorce): A divorce judgment ends your marriage or domestic partnership, or both. You will be legally a single person again. In a divorce case you can ask the judge to make orders about parenting issues, child support, spousal or partner support, and dividing property and debts.

Legal Separation: A legal separation does not end a marriage or domestic partnership. A couple may decide to file for legal separation instead of a divorce for religious reasons, financial reasons, or because they just want to live apart and have court orders about money, property, and parenting issues.

For information about divorce and legal separation, including the procedures for filing in family court to to *www.courts.ca.gov/selfhelp-divorce.htm.*

Read *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO). This form can be found online at *www.courts.ca.gov/documents/fl107info.pdf.*

Summary Dissolution: This type of action is available for couples who have been married or domestic partners for less than five years, do not have children together, do not seek an order for support, do not own real estate or land, and have limited debts and property. For more information, go to:

http://www.courts.ca.gov/1241.htm;

http://www.courts.ca.gov/1242.htm; and

http://www.courts.ca.gov/16430.htm.

Item number: 32

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Continuance Rule and Forms

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

Staff contact (name, phone and e-mail): Gregory Tanaka (415) 865-7671 - gregory.tanaka@jud.ca.gov; Gabrielle Selden -(415) 865-8085 - gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Amend rule 5.94; revise form FL-303, FL-306 and FL-307, approve forms FL-302-INFO, FL-306-INFO, and form FL-308. Propose changes to one rule of court and three forms relating to the procedure for continuing a hearing as described in rule 5.94 of the California Rules of Court. In addition, the committee proposes two new information sheets—one that explains the process associated with form FL-306 and another that describes the options for rescheduling a hearing. The changes are intended to respond to the concerns raised by courts that form FL-306, revised effective September 1, 2017, is not being used by attorneys and the parties for the limited purpose intended by the Judicial Council and provide general information to litigants about rescheduling hearings.

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

SPR19-32

Title
Family Law: Changes to Continuance Rules and Forms

Proposed Rules, Forms, Standards, or Statutes
Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-306/FL-307/FL-308-INFO, FL-308, FL-309, and FL-310; revise forms FL-303 and FL-306; revoke and replace form FL-307

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes changes to four rules of court and three forms, and the adoption of one new rule of court and two new forms and an information sheet to implement new procedures for rescheduling (continuing) a hearing in family court. The new procedures would (1) respond to the concerns raised by court professionals following the September 1, 2017, publication of the amended rule and revised forms relating to continuing hearings in family court, and (2) specify when a party can and cannot file a request to reschedule a hearing without first notifying and serving the other party.

Background

Effective September 1, 2017, the Judicial Council revoked form FL-306, *Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders* and replaced it with two new forms—an application and an order. The title of new form FL-306 was changed to *Request to Continue Hearing* to harmonize it with other civil forms used to request a continuance to effect service with temporary emergency (ex parte) orders (i.e., *Request to Continue Court*

Hearing (form DV-116), *Request to Continue Court Hearing* (form WV-115), and *Request to Continue Court Hearing* (form EA-115)).

In addition, form FL-306 was expanded to cover actions filed by the Department of Child Support Services in parentage cases and to allow a party to use the form to ask the court to continue a hearing on a *Request for Order* (form FL-300) (hereafter RFO), order to show cause, or other moving papers without temporary emergency orders "*to allow time for service on the other party before the hearing*" (emphasis added).[1]

Rule 5.94(f) and forms FL-306 and *Order on Request to Continue Hearing* (form FL-307) cover requests to continue a hearing in limited circumstances. They allow a party to request that the court continue a hearing when the other parties in the case have not been served with notice of the hearing. In this situation, under rule 5.94, the moving party is not required to provide notice to the other party before seeking an order to continue the hearing. Rule 5.94 also allows responding parties who have been served to use form FL-306 to request a continuance of a hearing involving temporary emergency orders, as permitted by Family Code section 245. However, the rule does not address how notice to the other party is to be provided.

When the title of the mandatory form was changed to *Request to Continue Hearing*, effective September 1, 2017, courts observed that parties and attorneys started using form FL-306 to ask to continue a hearing date in all cases, including when the other party had actually been served with notice of the hearing.

There are no statewide rules of court or forms that cover procedures for family law continuances other than as provided by rule 5.94(f). The procedure for all other continuances is governed by local court rules. Local procedures generally require that the party asking to continue the hearing provide notice of the request to the other parties and serve copies of the request. This allows the other parties the opportunity to be heard on the request to continue the hearing before the court makes an order.

The changes proposed to rule 5.94 and other forms would address the issue of when notice is required on the other party before asking the court to continue a hearing and provide a method for the other party to respond to the request before the court considers the request. A new information sheet would also educate parties about using and responding to a request to continue a hearing using form FL-306 or form FL-307, and generally describe other procedures to reschedule a hearing in family court.

The charts in Attachment A to this proposal illustrate the procedures for rescheduling a hearing in family court. The charts are for informational purposes only, and are not part of the rules or forms proposed for adoption.

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[1] Judicial Council of Cal., Adv. Com. rep., *Family Law: Request to Continue Hearing and Declaration Regarding Notice of Request for Temporary Emergency Orders* (Apr. 28, 2017), p. 3, *https://jcc.legistar.com/View.ashx?M=F&ID=5165106&GUID=7C168ED1-5D9D-47F5-A816-B9A99F2CAB4C.*

The Proposal

Rules

Rule 5.2. Division title; definitions; application of rules and laws

Rule 5.2 would be amended to include a new item 11 to provide that "reschedule the hearing" means the same as "continue the hearing." The change generally reflects the committee's proposal to use the term "reschedule" to replace "continue" or "continuance" throughout the rules and forms in this proposal. This change would respond to comments from court professionals and organizations that assist self-represented litigants that the term "continue" is often misunderstood and should be clarified so that a party understands that the hearing will not proceed (continue) as scheduled, but will be reset to a future date.

Rule 5.94. Order shortening time; other filing requirements; request to continue hearing

The committee proposes extensive changes to the rescheduling procedures in rule 5.94(f). For this reason, the committee proposes striking subdivision (f) and placing the rescheduling rules under proposed new rule 5.95. To reflect the change, the title of rule 5.94 would be changed to *Order shortening time; other filing requirements; failure to serve request for order.*

Rule 5.95. Request to reschedule hearing

The proposed new rule would organize the requirements for rescheduling a hearing under subdivisions that highlight the reason for the request. For example, subdivisions (a) through (d) would be titled as follows:

(a) Reschedule a hearing because the other party was not served
(b) Written agreements (stipulations) to reschedule a hearing
(c) Reschedule a hearing after the other party was served with the Request for Order or other moving papers
(d) Reschedule a hearing to attend mediation or child custody recommending counseling

Reorganizing the rules as noted above would help the parties understand the procedures that apply in each situation and the forms and information sheets associated with those procedures.

A significant proposed change to the rescheduling rule would be reflected in subdivisions (a) and (c). Under (a)(2)(B), the rule would allow the court to delegate to the court clerk the authority to reschedule a hearing on the party's written request if the RFO did not involve temporary emergency orders or if the party asking to reschedule does not request a change to any temporary emergency (ex parte) orders that were initially granted with the RFO. If temporary emergency orders are involved, the expiration date of the temporary emergency (ex parte) orders would be extended to the date of the new hearing. This change would increase court efficiencies by eliminating the requirement for judicial officers to review and sign the request.

As noted in the Alternatives Considered (below) comments are requested about another issue in subdivision (a) regarding whether the rule should reference deadlines for serving a request for order.

In addition, current rule 5.94(f)(5)(A)(i) provides that the party asking for the continuance should submit *Request to Continue Hearing* (form FL-306) to the court no later than five court days before the hearing date set on the RFO, order to show cause, or other moving papers. The committee seeks input about whether this provision should be included in proposed new rule 5.95(a)(1). For example, has it been helpful for the rule to provide a suggestion or best practice with regard to a deadline for submitting a written request to reschedule a hearing?

Proposed rule 5.95(c) would clarify that a party may not file a request to reschedule a hearing without first notifying and serving the other party with the request. In addition, the rule would require that the party file with the request to reschedule the hearing a declaration demonstrating when and how notice and service was completed.

Further, proposed rule 5.95 would specify that the process for notice and service on the other party would follow the same procedure for when a party requests temporary emergency (ex parte) orders under rules 5.151 through 5.165. For example, the party would have to obtain a court date for when the party will submit the request to reschedule papers to the court (or when the court will have a hearing on the request to reschedule). Then, the party would have to notify the other party by 10 a.m. the day before the date obtained from the court and serve the papers on the other party.

The proposed amendments would also prompt the party to refer to their court's local rules and procedures when proceeding under rule 5.95(c). This would acknowledge that courts differ as to how these filings are processed. For example, as previously noted, some courts set a hearing on the request to reschedule and others process the request on paper without a hearing.

Rules 5.151 and 5.165

These rules would be amended to incorporate the term "reschedule" and refer to new rule 5.95. In addition, subdivision (a) of rule 5.165 (Requirements for notice) would be amended to provide:

(a) Method of notice

Notice of appearance at a hearing to request emergency orders may be given personally, by telephone, ~~in writing~~, voicemail, fax transmission, electronic means, overnight mail, or other overnight carrier.

As illustrated above, the rule would be amended to clarify that "in writing" means that notice may be given by voicemail, fax transmission, or overnight mail or other overnight carrier. These proposed amendments would align the rule to the current methods of notice listed in form

FL-303. In addition, the committee proposes adding "electronic means" to these methods, which could include notice to the other party by e-mail.

Revised Forms

Request to Continue Hearing (form FL-306)

The committee proposes changing this form as follows:

- The title would be changed to *Request to Reschedule Hearing.*
- All references to "continue" or "continuance" would be replaced with "reschedule," as previously noted.
- The content would be distributed under these headings: "Case Information," "Request," "Reason for Rescheduling," "Special Procedures May Apply," and "Proposed Order Required."
- The form would include a reference to a new information sheet about how to reschedule a hearing in family court.
- The form would allow the party to request that the court reschedule the hearing after a certain date and specify dates that the party is not available.

Order on Request to Continue Hearing (form FL-307)

This form would be renumbered from FL-307 to FL-309. The form number FL-307 would be reassigned to a proposed new form, *Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Order,* as described below. The renumbered order form would be revised to include a space for the court to order the parties to attend child custody mediation or child custody recommending counseling.

Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders (form FL-303)

Item 2 of this form would be revised to provide check boxes for a party to check if the party seeks to reschedule a hearing with or without temporary emergency (ex parte) orders. Item 3a(2) would be reformatted and a new check box would be added for a party to specify if notice was given electronically to the other party. Item 4 would be revised to add check boxes for the forms a party would need to have served on the other party before filing the request to reschedule.

New forms

How to Reschedule a Hearing in Family Court (form FL-306/FL-307/FL-308-INFO)

The proposed new form would provide general information to the parties involved in a proceeding to reschedule a hearing. The form would reflect the requirements of proposed new rule 5.95, provide references to specific rules of court and how to find the rules, and include references to resources for parties who have questions about the process or wish to seek legal advice.

Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Orders (form FL-307)

The committee proposes a new form for a party to use to reschedule a hearing when the court has issued temporary emergency (ex parte) orders with a *Request for Order* (form FL-300). The form would include procedures specific to actions involving temporary emergency orders. For example, Family Code section 245 specifies that a party responding to temporary emergency orders for property restraint (under Family Code sections 2045 or 4620) is entitled to continue the hearing one time as a matter of course. The entitlement is limited to these types of cases and the form would clarify this point in "Reason for Rescheduling." Specifically, item 7c would provide:

> The hearing needs to be rescheduled because: [¶] … [¶] as the responding party to a request for temporary emergency (ex parte) orders for property restraint, I am entitled as a matter of course to have the court reschedule the hearing one time for a reasonable period to respond to the request. *(This reason is only available if you checked item 5b above.)*

The form would also specify that if the court grants the request to reschedule the hearing, the expiration date of the emergency orders would be extended to the end of the new hearing. Having this separate form would eliminate confusion for parties whose case does not involve emergency orders.

Agreement and Order to Reschedule Hearing (form FL-308)

This proposed optional form would provide parties with a form to serve as their stipulation if the court does not provide a local form for agreements. As with *Order on Request to Reschedule Hearing* (form FL-309), the court order section of form FL-308 would include a space for the court to order the parties to attend child custody mediation or recommending counseling. It would be limited to cases in which a party is only seeking to reschedule the hearing to a new date or, if applicable, extend the expiration date of a temporary emergency (ex parte) order. Parties who want to agree to reschedule the hearing as well as modify temporary emergency (ex parte) orders would be required to draft their own agreement for the court to sign.

Responsive Declaration to Request to Reschedule Hearing (form FL-310)

This proposed optional form would help implement the new procedures specified in rule 5.95 and the information sheet. Including this form in the proposal would likely encourage the other party to file and serve a response, thereby providing information for the judicial officer to consider before making an order on the request to reschedule the hearing.

Alternatives Considered

Timing of proposal

The Family and Juvenile Law Advisory Committee considered whether to circulate the proposal in the winter 2018 comment cycle or the spring 2019 cycle. The committee decided not to circulate a proposal in the previous cycle to allow time for committee members to undertake a comprehensive review of rule 5.94 and its associated forms before responding to the concerns

raised by court professionals following the September 1, 2017, publication of the amended rule and revised forms.

The committee also considered proposing interim technical changes to the forms used to continue a hearing in family court. The committee did not pursue this option, as this would have required courts to incur additional costs to produce copies over three consecutive forms publication cycles. Instead, the committee directed staff to provide technical assistance to the courts about form FL-306 and concurrently work with committee members to draft a proposal to circulate for comment in a future cycle.

Comments requested about proposed rule 5.95(a)

With respect to subdivision (a) of rule 5.95, the committee seeks specific comment about the opening paragraph, and whether reference should be made about deadlines for serving the RFO.

The committee considered the two options shown in the rule below:

> **(a) Reschedule a hearing because the other party was not served**
>
> If a *Request for Order* (form FL-300) (with or without temporary emergency (ex parte) orders), order to show cause, or other moving paper is not served on the other party and the requesting party still wishes to proceed with the hearing,
>
> [Option 1] the party must ask the court to reschedule the hearing date.
>
> [Option 2] the party must ask the court to reschedule the hearing date by the deadline described in rule 5.92 or as ordered by the court.

Although option 2 is included in the proposed rule, the committee considered this a close call and requests that commenters specifically weigh in on which option they think best. The committee was not certain if referencing deadlines in other rules of court would provide clarity or cause confusion for parties and attorneys who wish to request that the court reschedule a request for order.

Comments requested about proposed rule 5.95(c)

As previously noted, existing rule 5.94(f)(5)(A)(i) provides that the party asking for the continuance should submit *Request to Continue Hearing* (form FL-306) to the court no later than five court days before the hearing date set on the RFO, order to show cause, or other moving papers. The committee seeks input from the courts about including this provision in rule 5.95 subdivision (c). Although the rule includes this proposed language, this was a close call for the committee. There are no statutes in the Family Code that specify or suggest a deadline for submitting a request to reschedule a regular hearing; however, Family Code section 211 does allow the Judicial Council to provide by rule for the practice and procedure in proceedings under the Family Code.[2] The committee would like to know if it has been helpful for the rule to

[2] Family Code section 211 provides: Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this code.

provide a suggestion or best practice with regard to a deadline for submitting a written request to reschedule a hearing.

Comments requested about item 10 in forms FL-306 and FL-307

As previously noted, the committee seeks comment about whether proposed rule 5.95 should continue to include a provision that the party submit the request and other documents to the court no later than five days before the hearing date on the RFO. This provision would also be included in forms FL-306 and FL-307. For the same reasons previously noted, the committee seeks input about whether the forms should include this language.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms and add them to the case management system, train court staff about the new and amended rules and the new and revised forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts in the long term by clarifying procedures.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are other changes to the rules and forms needed for the proposal to address the stated purpose?
- **Specific comments about rule 5.95**

  a. *Rule 5.95(a)*. Please indicate if opening paragraph of rule 5.95(a) should end with the language in Option 1 or Option 2 (below). Please explain your answer.

  Rule 5.95(a) would provide: If a Request for Order (form FL-300) (with or without temporary emergency (ex parte) orders, order to show cause, or other moving paper is not served on the other party and the requesting party still wishes to proceed with the hearing,…
  [*Option 1*] the party must ask the court reschedule the hearing date.
  [*Option 2*] the party must ask the court to reschedule the hearing date by the deadline described in rule 5.92 or as ordered by the court.

  b. *Rule 5.95(c)(1)(A)(iv)*. Should the rule maintain the language that is in the current rule at 5.94(f)(5)(A)(i)? Has it been helpful for the rule to provide a suggestion or best practice with regard to a deadline for submitting a written request to reschedule a hearing?
  ,
  Rule 5.95(c)(1)(A)(iv) would provide: The party should submit the forms in (iii) to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper.

- **Specific comments about forms**

  a. *Form FL-306*. Should item 10 on the form be included to specify that the party should submit the documents in item 9 to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper? Please explain your answer.

  b. *Form FL-306/FL-307/FL-308-INFO*. Should this form include the current requirements for submitting the request to reschedule no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper? Please explain your answer.

c. *Form FL-307*. Should item 10 on this form be included to specify that the party should submit the documents in item 9 to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper? Please explain your answer.

The advisory committee [or other proponent] 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. Rules 5.2, 5.94, 5.95, 5.151, 5.155, at pages 11–19
2. Forms FL-303, FL-306, FL-306/FL-307/FL-308-INFO, FL-307, FL-308, FL-309, FL-310, at pages 20–33
3. Attachment A: Procedural flow charts

Rule 5.95 of the California Rules of Court would be adopted and rules 5.2, 5.94, 5.151, and 5.165 would be amended, effective January 1, 2020, to read:

Rule 5.2. Division title; definitions; application of rules and laws

(a) * * *

(b) Definitions and use of terms

As used in this division, unless the context or subject matter otherwise requires, the following definitions apply:

(1)–(10) * * *

(11) "Reschedule the hearing" means the same as "continue the hearing" under the Family Code.

(c)–(g) * * *

Rule 5.94. Order shortening time; other filing requirements~~; request to continue hearing~~ failure to serve request for order

(a)–(d) * * *

(e) Failure to ~~timely~~ serve request for order

The *Request for Order* (form FL-300) or other moving papers such as an order to show cause, along with any temporary emergency (ex parte) orders, will expire on the date and time of the scheduled hearing if the requesting party fails to:

(1) Have the other party ~~timely~~ served before the hearing with the *Request for Order* (form FL-300) or other moving papers, such as an order to show cause; supporting documents; and any temporary emergency (ex parte) orders; or

(2) Obtain a court order to ~~continue~~ reschedule the hearing.

~~(f) Procedures to request continued hearing date~~

~~(1) If a *Request for Order* (form FL-300), order to show cause, or other moving paper is not timely served on the other party before the date of the hearing, and the party requesting the order wishes to proceed with the request, he or she must ask the court to continue the hearing date.~~

~~(2) On a showing of good cause or on its own motion, the court may:~~

~~(A) Continue the hearing and set a new date; and~~

~~(B) Modify or terminate any temporary emergency (ex parte) orders initially granted with the *Request for Order,* order to show cause, or other moving paper.~~

~~(3) If the court grants a continuance and makes no change to the temporary emergency (ex parte) orders, those orders are extended until the time of the continued hearing or to another date specified by the court.~~

~~(4) The party served with a *Request for Order* (form FL-300), order to show cause, or other moving paper that includes temporary emergency (ex parte) orders:~~

~~(A) Is entitled to one continuance as a matter of course for a reasonable period of time to respond. A second or subsequent request by the responding party to continue the hearing must be supported by facts showing good cause for the continuance;~~

~~(B) May ask the court to continue the hearing by using *Request to Continue Hearing* (form FL-306); and~~

~~(C) Must file and serve a *Responsive Declaration to Request for Order* (form FL-320) before the date of the new hearing, as required by law or described in *Order on Request to Continue Hearing* (form FL-307).~~

~~(5) The following procedures apply to either party's request to continue the hearing:~~

~~(A) The party asking for the continuance must complete and submit an original *Request to Continue Hearing* (form FL-306) with two copies for the court to review, as follows:~~

~~(i) The form should be submitted to the court no later than five court days before the hearing date set on the *Request for Order*, order to show cause, or other moving papers.~~

~~(ii) The party may present the form to the court on the date of the hearing.~~

(iii) The party who, on the date of the hearing, makes an oral request to the court to continue the hearing, is not required to complete form FL-306, but must complete and submit an *Order on Request to Continue Hearing* (form FL-307) if the court grants the request.

(B) Along with form FL-306, the party asking for the continuance must submit to the court an *Order on Request to Continue Hearing* (form FL-307) with the caption and initial items completed as described on the form.

(C) After the court signs and files form FL-307, a filed copy must be served on the other party as follows, unless the court orders otherwise:

(i) If the continuance is granted, an *Order on Request to Continue Hearing* (form FL-307) must be attached as the cover page and served, along with the *Request for Order* (form FL-300) or other moving papers such as an order to show cause and any temporary emergency (ex parte) orders and supporting documents.

(ii) If the court grants the responding party's request for a continuance, and the party who asked for the order was absent when the continuance was granted, then an *Order on Request to Continue Hearing* (form FL-307) must be attached as the cover page to any documents the court orders served on that party.

(iii) Service must be in the manner required by rule 5.92 or as ordered by the court.

(D) If the *Order on Request to Continue Hearing* (form FL-307), *Request for Order* (FL-300) or order to show cause, original or modified temporary emergency (ex parte) order, and supporting documents are not timely served on the other party, and the requesting party wishes to proceed with the hearing, he or she must repeat the procedures in this rule unless the opposing party agrees to waive notice and proceed with the hearing.

Rule 5.95. Request to reschedule hearing

(a) Reschedule a hearing because the other party was not served

If a *Request for Order* (form FL-300) (with or without temporary emergency (ex parte) orders), order to show cause, or other moving paper is not served on the other party and the requesting party still wishes to proceed with the hearing, the party must ask the court to reschedule the hearing date by the deadline described in rule 5.92 or as ordered by the court.

(1) To request that the court reschedule the hearing to serve papers on the other party, the party must take one of the following actions:

(A) *Before the date of the hearing*

(i) The party must complete and file with the court a written request and a proposed order. The following forms may be used for this purpose: *Request to Reschedule Hearing* (form FL-306) or *Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Orders* (form FL-307), whichever form is appropriate for the case, and *Order on Request to Reschedule Hearing* (form FL-309); or

(ii) The party should submit the request to the court no later than five days before the hearing set on the request for order, order to show cause, or other moving papers.

(B) *On the date of the hearing*

Appear and orally ask the court to reschedule the hearing. The party is not required to file a written request but must complete and submit a proposed order to the court. *Order on Request to Reschedule Hearing* (form FL-309) may be used for this purpose.

(2) The court may do any of the following:

(A) Grant or deny the request to reschedule the hearing.

(B) Delegate to the court clerk the authority to reschedule the hearing if:

(i) The request to reschedule the hearing is required to allow more time to serve the other party with notice of the hearing; and

(ii) The party asking to reschedule the hearing does not request a change to the temporary emergency (ex parte) orders issued with the *Request for Order* (form FL-300).

(3) If the court reschedules the hearing:

(A) If applicable, on a showing of good cause, the court may modify or terminate any temporary emergency (ex parte) orders initially granted with the request for order, order to show cause, or other moving paper.

(B) The order (for example, *Order on Request to Reschedule Hearing* (form FL-309)) must be served on the other party in the case, along with the *Request for Order* (form FL-300) or other moving papers such as an order to show cause, any temporary emergency (ex parte) orders, and supporting documents.

(C) If the other party has not been served with the papers in (B) after the court granted the request to reschedule, the party must repeat the procedures in this rule, unless the court orders otherwise.

(b) Written agreements (stipulations) to reschedule a hearing

The court may order that the hearing date of a *Request for Order* (FL-300), order to show cause, or other moving paper be rescheduled based on a written agreement (stipulation) between the parties and/or their attorneys.

(1) The parties may complete *Agreement and Order to Reschedule Hearing* (form FL-308) for this purpose.

(2) The parties may agree to reschedule the hearing to a date that must be provided by the court clerk. Parties should follow the court's local rules and procedures for obtaining a new hearing date.

(3) If temporary emergency orders are in effect, those orders will remain in effect until after the end of the new hearing date, unless modified by the court.

(4) The court must approve and sign the agreement to make it a court order.

(5) The court may limit the number of times that parties can agree to reschedule a hearing.

(c) Reschedule a hearing after the other party was served with the request for order or other moving papers

The procedures in this section apply when a *Request for Order* (form FL-300) was served on the other party as described in rule 5.92 or as ordered by the court and either party seeks to reschedule the hearing date, and the parties are not able to reach an agreement about rescheduling the hearing.

(1) To request that the hearing be rescheduled, either party must submit a written request to reschedule before the hearing as described below in (A) or appear in court on the date of the hearing and orally ask the court to reschedule, as described below in (B):

(A) *Before the date of the hearing*

(i) The party wishing to reschedule the hearing must complete a written request and a proposed order. The following forms may be used for this purpose: *Request to Reschedule Hearing* (form FL-306) or *Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Orders* (form FL-307), whichever form is appropriate for the case, and *Order on Request to Reschedule Hearing* (form FL-309).

(ii) The party must first notify and serve the other party. Notice and service to the other party of the documents in (A) must be completed as required by rules 5.151 through 5.169.

(iii) The party must file or submit to the court the forms in (i), along with a declaration describing how the other party was notified of the request to reschedule and served the documents. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local form, or a declaration that contains the same information as form FL-303 may be used for this purpose.

(iv) The party should submit the forms in (iii) to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving papers.

(v) The party responding to a written request to reschedule may file and serve a responsive declaration to the request to reschedule before the court considers the written request. *Responsive*

Declaration to Request to Reschedule Hearing (form FL-310) may be used for this purpose.

(B) *On the date of the hearing*

The party wishing to reschedule the hearing may appear in court and orally ask to reschedule the hearing. The party is not required to file a written request but must complete and submit a proposed order to the court. *Order on Request to Reschedule Hearing* (form FL-309) may be used for this purpose.

(2) The court may do any of the following:

(A) Grant the request to reschedule the hearing on a showing of good cause or as required by law.

(B) Deny the request to reschedule absent a showing of good cause.

(C) Modify or terminate any temporary emergency (ex parte) orders initially granted with the request for order, order to show cause, or other moving paper.

(d) Reschedule a hearing to attend mediation or child custody recommending counseling

(1) When parties need to reschedule a hearing relating to child custody and visitation (parenting time) because they have been unable to attend the family court services appointment, they should follow their local court rules and procedures for requesting and obtaining an order to reschedule the hearing.

(2) If the local court has no local rules and procedures for rescheduling hearings under (1), the parties may:

(A) Complete and file a written agreement (stipulation) for the court to sign as described in (b) of this rule; or

(B) Follow the procedures in (c) to ask for a court order to reschedule the hearing.

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a) * * *

(b) Purpose

The purpose of a request for emergency orders is to address matters that cannot be heard on the court's regular hearing calendar. In this type of proceeding, notice to the other party is shorter than in other proceedings. Notice to the other party can also be waived under exceptional and other circumstances as provided in these rules. The process is used to request that the court:

(1)–(2) * * *

(3) Make orders about procedural matters, including the following:

(A) Setting a date for a hearing on the matter that is sooner than that of a regular hearing (granting an order shortening time for hearing);

(B) Shortening or extending the time required for the moving party to serve the other party with the notice of the hearing and supporting papers (grant an order shortening time for service); and

(C) ~~Continuing~~ Rescheduling a hearing or trial.

(c) Required documents

(1) *Request for order*

A request for emergency orders must be in writing and must include all of the following completed documents:

~~(1)~~(A) *Request for Order* (form FL-300) that identifies the relief requested.

~~(2)~~(B) When relevant to the relief requested, a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160).

~~(3)~~(C) *Temporary Emergency (Ex Parte) Orders* (form FL-305) to serve as the proposed temporary order.

~~(4)~~(D) A written declaration regarding notice of application for emergency orders based on personal knowledge. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local court form, or a declaration that contains the same information as form FL-303 may be used for this purpose.

~~(5)~~(E) A memorandum of points and authorities only if required by the court.

(2) *Request to reschedule hearing*

A request to reschedule a hearing must comply with the requirements of rule 5.95.

(d)–(e) * * *

Rule 5.165. Requirements for notice

(a) Method of notice

Notice of appearance at a hearing to request emergency orders may be given personally, by telephone, ~~in writing~~, voicemail, fax transmission, electronic means, or overnight mail or other overnight carrier.

(b)–(c) * * *

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER:	FOR COURT USE ONLY
FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	Draft not approved by the Judicial Council 2/20/2019
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
DECLARATION REGARDING NOTICE AND SERVICE OF REQUEST FOR TEMPORARAY EMERGENCY (EX PARTE) ORDERS	CASE NUMBER:

NOTICE: Do not use this form to ask for domestic violence restraining orders. Before completing this form, read your court's local procedures for requesting temporary emergency orders and obtaining the information needed to complete item 2 of this form. Courts may grant temporary emergency orders with or without an emergency hearing. Find local rules at **courts.ca.gov/3027.htm**.

1. I am *(specify)* ☐ attorney for ☐ petitioner ☐ respondent ☐ other parent/party
   ☐ not a party in the case *(name and title/relationship to party):*
2. I ☐ did ☐ did not give notice that *(complete a and b):*
   a. ☐ there will be an emergency court hearing ☐ papers will be submitted to the court
   b. On the request ☐ for temporary emergency (ex parte) orders ☐ to reschedule a hearing
      ☐ to reschedule a hearing involving temporary emergency (ex parte) orders.

   on the date, time, and location indicated below:

   Date: Time: ☐ Dept.: ☐ Room:
   Address of court: ☐ same as noted above ☐ other *(specify):*

3. **NOTICE** *(If you gave notice, complete item 3a. If you did not give notice, complete item 3b or 3c.)*
   a. ☐ I gave notice as described in items (1) through (5) below:
      (1) I gave notice to *(select all that apply)*
      ☐ petitioner. ☐ petitioner's attorney.
      ☐ respondent. ☐ respondent's attorney.
      ☐ other parent/party. ☐ other parent's/party's attorney.
      ☐ child's attorney. ☐ Other *(specify):*
      (2) I gave notice on *(date):* at ☐ a.m. ☐ p.m. as follows:
      ☐ personally at *(location):* ,California
      ☐ by telephone telephone no.:
      ☐ by fax fax no.:
      ☐ by voicemail voicemail no.:
      ☐ By electronic service *(if permited) (specify electronic service address of person):*
      ☐ by overnight mail or other overnight carrier.
      (3) I gave notice *(select one):*
      ☐ by 10 a.m. the court day before this emergency hearing.
      ☐ after 10 a.m. the court day before this emergency hearing because of the following exceptional circumstances *(specify):*

Form Approved for Optional Use
Judicial Council of California
FL-303 [Rev. January 1, 2020]

Family Law, §§ 2045, 3062–3064, 4620, 7710
Cal. Rules of Court, rules 5.151–5.169
www.courts.ca.gov

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

(4) I notified the person in 3a(1) that the following temporary emergency orders are being requested *(specify):*

(5) The person in 3a(1) responded as follows: ☐ Attachment 3a(5)

(6) I ☐ do ☐ do not believe that the person in 3a(1) will oppose the request for temporary emergency orders.

b. ☐ **Request for waiver of notice.** Due to exceptional circumstances, I did not give notice about the request for temporary emergency orders. I ask that the court waive notice to the other party to help prevent *(specify):*

(1) ☐ immediate danger or irreparable harm to myself (or my client) or to the children in the case.
(2) ☐ an immediate risk that the children in the case will be removed from the state of California.
(3) ☐ immediate loss or damage to property subject to disposition in the case.
(4) ☐ Other exceptional circumstances *(specify):*

Facts showing exceptional circumstances in support of the request to waive notice include *(specify):* ☐ Attachment 3b

c. ☐ **Unable to provide notice.** I did not give notice about the request for temporary emergency orders. I used my best efforts to tell the opposing party when and where this hearing would take place but was unable to do so. The efforts I made to inform the other person were *(specify below):* ☐ Attachment 3c

4. ☐ **SERVICE OF DOCUMENTS**

a. The following documents were served on the other party or parties in (5) below before the request was filed with the court:

(1) ☐ A copy of *Request for Order* (form FL-300) for temporary emergency orders, *Temporary Emergency (Ex Parte) Orders* (form FL-305).
(2) ☐ A copy of request to reschedule hearing and order on request to reschedule hearing. Forms FL-306 and FL-309 may be used for the request and order.
(3) ☐ A copy of request to reschedule hearing involving temporary emergency (ex parte) orders and order on request to reschedule hearing. Forms FL-307 and FL-309 may be used for the request and order.
(4) ☐ Other *(specify):*
(5) ☐ Petitioner ☐ Petitioner's attorney ☐ Other parent/party ☐ Other parent's/party's attorney
☐ Respondent ☐ Respondent's attorney ☐ Child's attorney ☐ Other *(specify):*

b. Service information: Date *(specify):* at ☐ a.m. ☐ p.m. as follows:
☐ personally at *(location):* ,California
☐ by fax on fax no.:
☐ by overnight mail or other overnight carrier.
☐ by electronic service *(if permitted) (specify electronic service address of person served):*

c. ☐ **Documents were not served on the opposing party** due to the exceptional circumstances specified in
☐ 3b, above ☐ 3c, above ☐ Attachment 4c.

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

(TYPE OR PRINT NAME)

(SIGNATURE)

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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* *4-01-2019*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
REQUEST TO RESCHEDULE HEARING	CASE NUMBER:

Notice: Read *How to Reschedule a Hearing in Family Court* (form FL-306/FL-307/FL-308-INFO) before you complete this form.

Notice: Do not use this form to ask to change the date of a domestic violence restraining order hearing. For more information, read form DV-115-INFO, *How to Ask for a New Hearing Date*.

CASE INFORMATION

1. Name of person asking to reschedule the hearing *(specify):*
   a. ☐ I am the party who filed the *Request for Order* or *Order to Show Cause* in item 2.
   b. ☐ I am the party who is responding to the *Request for Order* or *Order to Show Cause* in item 2.
2. I ask that the court reschedule (continue) the hearing date for the *(select one)*
   a. ☐ *Request for Order.*
   b. ☐ *Order to Show Cause for* ☐ Contempt ☐ Seek Work.
   c. ☐ Other *(specify):*
3. The item in 2 was filed on *(date):*
4. The hearing is currently set for *(date):*
5. The court did not issue temporary emergency (ex parte) orders with the item in 2.

REQUEST

6. I request that the hearing be rescheduled as follows:
   a. ☐ After *(specify date):*
   b. ☐ Dates I am not available *(specify below):*
   c. ☐ Other *(specify):*

REASON FOR RESCHEDULING

7. The hearing needs to be rescheduled because *(select all that apply):*
   a. ☐ the papers were not served before the hearing date.
   b. ☐ the parties need to attend child custody mediation or child custody recommending counseling before the hearing.
   c. ☐ other good cause as stated ☐ below ☐ on Attachment 7(c)

Form Approved for Optional Use
Judicial Council of California
FL-306 [Rev. January 1, 2020]

REQUEST TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Cal. Rules of Court, rule 5.94
www.courts.ca.gov

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

SPECIAL PROCEDURES MAY APPLY

The procedures in items 8 and 9 apply only if the documents in item 2 were served on the parties.

8. Unless the court determines that there are exceptional circumstances, the other parties must first be:
   a. Notified that you are going to ask the court to reschedule the hearing; and
   b. Served with copies of the request to reschedule at the first reasonable opportunity.
9. You must then submit to the court a proof of the notice and service in items 8a and 8b, along with the request to reschedule. You may use *Declaration Regarding Notice and Service of Temporary Emergency (Ex Parte) Orders* (form FL-303) to comply with the proof of notice and service.
10. You should submit the documents in item 9 to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper.

PROPOSED ORDER REQUIRED

11. I have submitted a proposed order on request to reschedule hearing. *(Order on Request to Reschedule Hearing* (form FL-309) may be used for this purpose.)

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

Date:

(TYPE OR PRINT NAME)

SIGNATURE

Form Approved for Optional Use
Judicial Council of California
FL-306 [January 1, 2020]

REQUEST TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

www.courts.ca.gov

FL-306/FL-307/FL-308-INFO How to Reschedule a Hearing in Family Court

1 General Information

This form provides information about how to obtain a court order to reschedule a hearing in family court. This information sheet may not cover everything you need to know about rescheduling a hearing in your court. To learn more:

- Find a lawyer through your local bar association, the State Bar of California at calbar.ca.gov, or the Lawyer Referral Service at 1-866-442-2529. For free and low-cost legal help (if you qualify), go to *www.lawhelpca.org*.
- Contact the family law facilitator or self-help center for information and assistance, and referrals to local legal services providers. Go to *www.courts.ca.gov/selfhelp-courtresources.htm*.
- Read California Rules of Court, rules 5.92 through 5.95 for the procedures to reschedule a hearing.
- Read rules of court, rules 5.151 to 5.169 for the procedures to notify and serve the other party with a *Request to Reschedule.*

You can get find these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 Written agreement (stipulation) to reschedule a hearing

The judge in your family court case may order that the hearing date be rescheduled based on an agreement (stipulation) between the parties or their attorneys.

You may use *Agreement and Order to Reschedule Hearing* (form FL-308) if you do not want to change temporary emergency orders. You may use a local form approved by the court, or write your own agreement.

You must follow your court's local procedures to obtain the new hearing date from the court clerk.

Important! If the court has issued temporary emergency orders and those orders are in effect, the parties could further agree that those emergency orders will remain in effect until the end of the new hearing. A draft of a new temporary order with new end dates may have to be given to the court for the judge to sign with your agreement.

When the parties have signed the agreement, you can present it to the court on the day of the hearing, but it is best if you can file it at least five days before that date, so the judge doesn't have to read your file multiple times.

Some courts may limit the number of times the parties can agree to rescheduling a hearing. Check your local court rules before submitting your written agreement.

For information about how to write up your agreement, get it approved by the court, and filed in your case, see *www.courts.ca.gov/selfhelp-agreeFL*, speak with an attorney, or get help at your court's self-help center or Office of the Family Law Facilitator.

If you and the other party do not have an agreement, the party who wants to reschedule the hearing must file papers to ask for a court order, such as form FL-306 or form FL-307.

3 When to use *Request to Reschedule Hearing* (form FL-306)

You may use this form to ask to reschedule the hearing if the request for order or order to show cause you want to reschedule:

- Does *not* include temporary emergency (ex parte) orders;
- Was not served on the other parties; or
- Was served on the other parties and there is a good reason why the hearing should be changed to a new date. See 6 for other requirements.

Form FL-306 may also be used to reschedule a hearing to be able to meet with a child custody mediator or recommending counselor before the hearing.

If this situation applies to you, ask your mediator or child custody recommending counselor for information.

Most courts have local procedures and forms for rescheduling a hearing but will accept form FL-306 or your agreement to reschedule the hearing.

Do not use form FL-306 to ask to change the date of a domestic violence restraining order hearing. For more information, read *How to Ask for a New Hearing Date* (form DV-115-INFO).

4 When to use *Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Orders* (form FL-307)

You may use form FL-307 to ask to reschedule the hearing if the request for order or order to show cause you want to reschedule:

- Includes temporary emergency (ex parte) orders.
- Was not served on the other parties.
- Was served on the other parties and there is a good reason why the hearing should be changed to a new date. See 6 for other requirements.

Form FL-307 may also be used to reschedule a hearing to be able to meet with a child custody mediator or recommending counselor before the hearing.

If this situation applies to you, ask your mediator or child custody recommending counselor for information Most courts have local procedures and forms for recheduling, but will accept form FL-307 or your agreement to reschedule the hearing.

Do not use form FL-307 to ask to change the date of a domestic violence restraining order hearing. For more information, read *How to Ask for a New Hearing Date* (form DV-115-INFO).

5 What if I need to reschedule a hearing because the Request for Order or Order to Show Cause was not served on the other party?

Before the date of the hearing, complete and file with the court a written request to reschedule the hearing and a proposed order.

Another option is to appear in court on the date of the hearing and ask the court to reschedule the hearing. In this case, the party is not required to file a written request but must complete and submit a proposed order to the court. *Order on Request to Reschedule Hearing* (form FL-309) may be used for this purpose.

6 What if I need to reschedule the hearing for a good reason and the other party was already served with the Request for Order or Order to Show Cause?

Complete a written request and a proposed order. You may use form FL-306 or FL-307, whichever form applies to your case, and *Order on Request for Hearing* (form FL-309).

- ***Follow your court's local rules*** to obtain a date for the court to consider your request to reschedule the hearing. Find your court's local rules online at ***www.courts.ca.gov/3027.htm.*** You will need to give this information to the other party.

  Important! Some courts will set a court hearing for the judge to consider the request to reschedule. Other courts do not have a hearing, but will make an order based on the papers submitted to the court clerk. Before you complete any forms, it is important that you know how your court handles requests to reschedule a hearing.

- ***Notify and serve the other party.*** The other party must be given notice of the request to reschedule the hearing and given a copy of the documents at the first reasonable opportunity before the court can consider the request. You may also include a blank *Responsive Declaration of Request to Reschedule Hearing* (form FL-310).

- ***Submit the written request and order to the court.***

  Important! When you submit the request and order you must also submit to the court proof that the party was notified and served with the documents. You may use *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local court form, or a declaration that contains the same information as form FL-303.

- ***Follow your court's procedure for obtaining the court order on your written request.***

Make an oral request on the date of hearing.
Another option is to appear in court on the date of the hearing and ask the court to reschedule the hearing. In this case, the party is not required to file a written request but must complete and submit a proposed order to the court. *Order on Request to Reschedule Hearing* (form FL-309) may be used for this purpose.

7 What do I do after the court makes the order?

You must have the other party served with the order and other documents. For example:

- Order to reschedule hearing (for example, form FL-309);
- A filed *Request for Order* (form FL-300) or other moving papers;
- Any temporary emergency (ex parte) orders; and
- Other papers that the court requires you to serve.

Prepare for your hearing. Find more information online at www.courts.ca.gov/1094.htm.

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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 4/01/2019*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
REQUEST TO RESCHEDULE HEARING INVOLVING TEMPORARY EMERGENCY (EX PARTE) ORDERS	CASE NUMBER:

Notice: Read *How to Reschedule a Hearing in Family Court* (form FL-306/FL-307/FL-308-INFO) before you complete this form.

Notice: Do not use this form to ask to change the date of a domestic violence restraining order hearing. For more information, read form DV-115-INFO, *How to Ask for a New Hearing Date*.

CASE INFORMATION

1. Name of person asking to reschedule the hearing *(specify):*
   a. ☐ I am the party who filed the *Request for Order* or *Order to Show Cause* in item 2.
   b. ☐ I am the party who is responding to the *Request for Order* or *Order to Show Cause* in item 2.
2. I ask that the court reschedule (continue) the hearing date for the *(select one)*
   a. ☐ *Request for Order.*
   b. ☐ *Order to Show Cause for* ☐ Contempt ☐ Seek Work.
   c. ☐ Other *(specify):*
3. The item in 2 was filed on *(date):*
4. The hearing is currently set for *(date):*
5. The court issued temporary emergency (ex parte) orders with item 2 relating to *(specify):*
   a. ☐ Child custody or visitation (parenting time).
   b. ☐ Property restraint orders under Family Code section 2045 or 4620.
   c. ☐ Other *(specify):*

   d. ***Notice: If the court grants the request to reschedule the hearing, the expiration date of any temporary emergency (ex parte) orders will be extended to the end of the new hearing, unless otherwise ordered by the court.***

REQUEST

6. I request that the hearing be rescheduled as follows:
   a. ☐ After *(specify date):*
   b. ☐ Dates I am not available *(specify below):*
   c. ☐ Other *(specify):*

Form Approved for Optional Use
Judicial Council of California
FL-307 [Rev. January 1, 2020]

Cal. Rules of Court, rule 5.94
www.courts.ca.gov

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

REASON FOR RESCHEDULING

7. The hearing needs to be rescheduled because *(select all that apply):*
   a. ☐ the papers were not served before the hearing date.
   b. ☐ the parties need to attend child custody mediation or child custody recommending counseling before the hearing.
   c. ☐ as the responding party to a request for temporary emergency (ex parte) orders for property restraint, I am entitled as a matter of course to have the court reschedule the hearing one time for a reasonable period to respond to the request. *(This reason is only available if you checked item 5b above.)*
   d. ☐ other good cause as stated ☐ below ☐ in Attachment 7(d)

SPECIAL PROCEDURES MAY APPLY

The procedures in items 8 and 9 apply only if the documents in item 2 were served on the parties.

8. Unless the court determines that there are exceptional circumstances, the other parties must first be:
   a. Notified that you are going to ask the court to reschedule the hearing; and
   b. Served with copies of the request to reschedule at the first reasonable opportunity.
9. You must then submit to the court a proof of the notice and service in 8a and 8b, along with the request to reschedule. You may use *Declaration Regarding Notice and Service of Temporary Emergency (Ex Parte) Orders* (form FL-303) to comply with the proof of notice and service.
10. You should submit the documents in item 9 to the court no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper.

PROPOSED ORDER REQUIRED

11. I have submitted a proposed order on request to reschedule hearing. *(Note: Order on Request to Reschedule Hearing* (form FL-309) *may be used for this purpose.)*

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

Date:

_____
(TYPE OR PRINT NAME)

▶ _____
SIGNATURE

Form Approved for Optional Use
Judicial Council of California
FL-307 [January 1, 2020]

REQUEST TO RESCHEDULE HEARING INVOLVING TEMPORARY EMERGENCY (EX PARTE) ORDERS

www.courts.ca.gov

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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 2/20/2019*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
AGREEMENT AND ORDER TO RESCHEDULE HEARING	CASE NUMBER:

The parties signing below agree to the following:

1. The hearing currently scheduled for *(date):* will be rescheduled (continued).
2. The name of the party who filed the *Request for Order*, *Order to Show Cause,* or other matter is:
3. The agreement ☐ includes ☐ does not include extending temporary emergency (ex parte) orders previously issued.
4. ☐ The rescheduled hearing date will be set ☐ on ☐ after *(specify date):*
5. Each party declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
   ☐ See attachment 5 for additional signatures.

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

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

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

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

Date:
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF OTHER PARENT/PARTY)

Date:
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR *(SPECIFY):* _____)

THE COURT ORDERS ***The court will complete the rest of this form***

6. The court hearing is rescheduled (continued) to the date, time, and location shown below:

   New Hearing Date: Time: Dept.: Room:

   Address of court: ☐ Same as noted above ☐ Other *(specify):*

   ☐ The parties must attend an appointment for child custody mediation or recommending counseling as follows *(specify date, time, and location):*

7. Temporary emergency (ex parte) orders *(select a or b):*
   a. ☐ There are no temporary emergency (ex parte) orders.
   b. ☐ The temporary emergency (ex parte) orders previously issued remain in effect until
      (1) ☐ the end of the new hearing in item.
      (2) ☐ *(date):*

Date: ▶ JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
FL-308 [New January 1, 2020]

AGREEMENT AND ORDER TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Cal. Rules of Court, rule 5.94
www.courts.ca.gov

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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* *2-20-2019*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
ORDER ON REQUEST TO RESCHEDULE HEARING	CASE NUMBER:

Party must complete items 1, 2, 3, and 4.

1. The hearing is currently scheduled for *(date):*
2. Name of party who filed the *Request for Order*, *Order to Show Cause,* or other matter is *(specify):*
3. Name of party asking to reschedule the hearing is *(specify):*
4. The request ☐ includes ☐ does not include temporary emergency (ex parte) orders previously issued.

The court will complete the rest of this form.

5. ☐ **Order denying request to reschedule hearing**
   The request to reschedule the hearing is DENIED for the reasons specified ☐ below ☐ on Attachment 5.

6. ☐ **Order granting request to reschedule hearing and notice of new hearing**
   a. The court hearing is rescheduled to the date, time, and location shown below:

   New Hearing Date: Time: Dept.: Room:

   Address of court: ☐ Same as noted above ☐ Other *(specify):*

   ☐ The parties must attend an appointment for child custody mediation or recommending counseling as follows: *(specify date, time, and location):*

   b. ☐ By granting the request, any temporary emergency (ex parte) orders previously issued remain in effect until
      (1) ☐ the end of the new hearing in item 6a.
      (2) ☐ *(date):*

7. **Reason for rescheduling**
   a. The hearing needs to be rescheduled because:
      (1) ☐ the papers were not served before the current hearing date.
      (2) ☐ the parties were referred to child custody recommending counseling before the hearing.
      (3) ☐ this is the responding party's first request to reschedule in a case involving property restraint emergency orders.
      (4) ☐ other good cause as stated ☐ below ☐ on Attachment 7a4.

   b. ☐ The court in its discretion finds good cause and reschedules the hearing.

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

8. Temporary emergency (ex parte) orders

a. ☐ The temporary emergency (ex parte) orders are MODIFIED as of this date. The new orders are stated in the attached
   (1) ☐ *Request for Order* (form FL-300)
   (2) ☐ *Temporary Emergency (Ex Parte) Orders* (form FL-305)
   (3) ☐ *Order to Show Cause* ☐ Contempt ☐ Seek Work ☐ Other *(specify):*
   (4) ☐ other *(specify):*

b. ☐ The temporary emergency (ex parte) orders are TERMINATED for the reasons stated ☐ on Attachment 8b ☐ in this section:

9. Service of order

a. ☐ No further service is required. Both parties were present at the hearing when the court made this order.

b. ☐ The documents listed in item 10 must be served by *(date):* on *(specify)*
   (1) ☐ petitioner/plaintiff.
   (2) ☐ respondent/defendant.
   (3) ☐ other parent/party.
   (4) ☐ other *(specify):*

c. ☐ All documents must be served as follows:
   (1) ☐ Personally served
   (2) ☐ Served by mail
   (3) ☐ Other *(specify):*

d. ☐ Other orders regarding service *(specify):*

10. Documents for service

A filed copy of this order (form FL-309) must be served along with the following papers:

a. ☐ a copy of the previously filed *Request for Order*, *Order to Show Cause,* or other moving paper

b. ☐ a copy of the extended or modified *Temporary Emergency (Ex Parte) Orders* (form FL-305).

c. ☐ other *(specify):*

11. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be filed and served on or before *(date):*

12. ☐ Other orders:

Date:

▶ _____
JUDICIAL OFFICER

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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 2/20/2019*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
RESPONSIVE DECLARATION TO REQUEST TO RESCHEDULE HEARING	CASE NUMBER:

Notice: Read *How to Reschedule a Hearing in Family Court* (form FL-306/FL-307/FL-308-INFO) before you complete this form.

INFORMATION ABOUT THE HEARING

1. The person asking to reschedule the hearing is *(name):*
2. The hearing is currently set for *(date):*
3. The request to reschedule ☐ includes ☐ does not include temporary emergency (ex parte) orders previously issued.

RESPONSE TO REQUEST TO RESCHEDULE HEARING

4. I *(select* a *or* b*):*
   a. ☐ consent to an order to reschedule the hearing.
      ☐ request that the hearing date be rescheduled as follows:
      (1) ☐ after *(specify date):*
      (2) ☐ Dates I am not available *(specify below):*
      (3) ☐ Other *(specify):*
   b. ☐ do not consent to an order to reschedule the hearing for the following reasons *(specify):*

☐ Attachment 4b

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

Date:

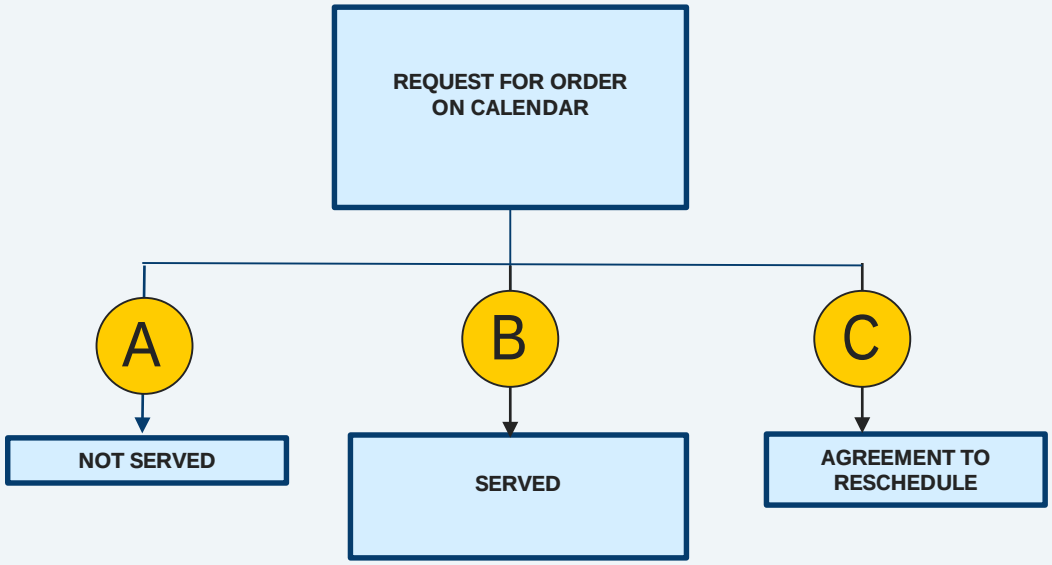
(TYPE OR PRINT NAME)

▶ SIGNATURE

Form Approved for Optional Use
Judicial Council of California
FL-310 [New January 1, 2019]

Family Code, § 245
Cal. Rules of Court, rule 5.94
www.courts.ca.gov

Procedures to Ask the Court to Reschedule a Hearing
Overview



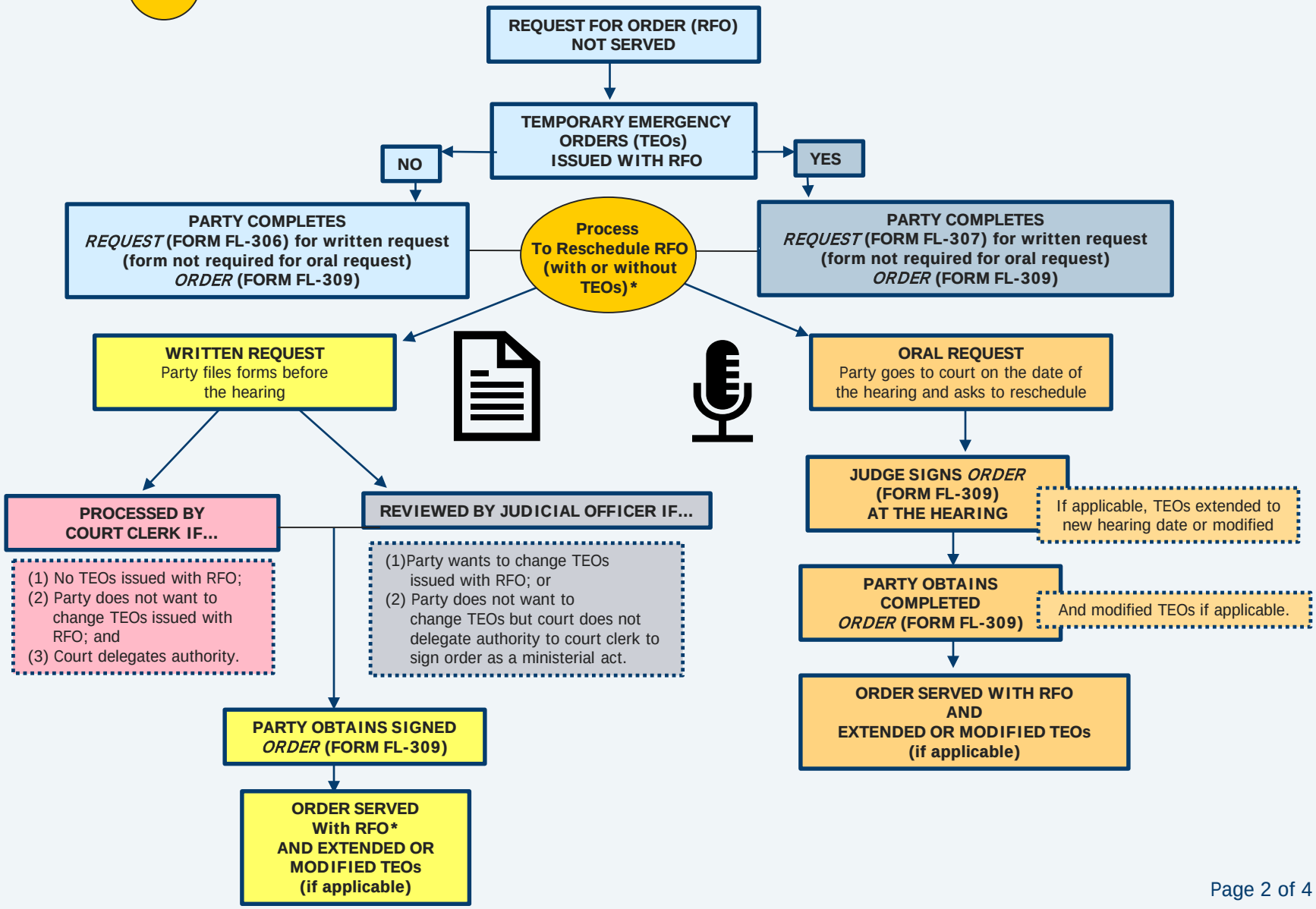
The charts in A and B on pages 2 and 3 of this attachment show:

(1) A party can ask to reschedule the hearing either *in writing* before the date of the hearing or *orally* on the date of the hearing.

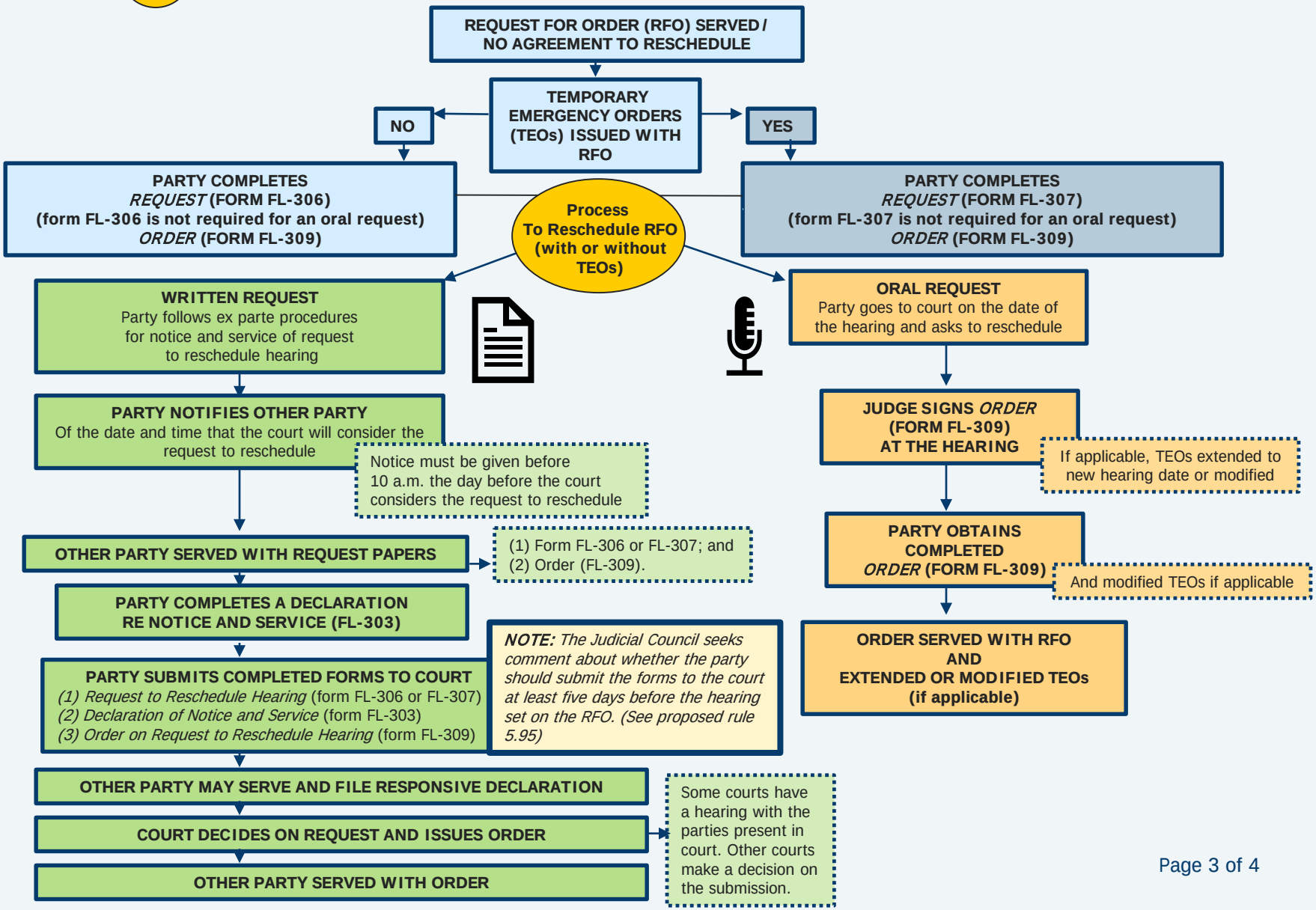
(2) If the request is made in writing before the hearing, the party may use form FL-306 or FL-307 depending on whether temporary emergency orders are involved.

(3) The process for obtaining the order either in writing or orally.

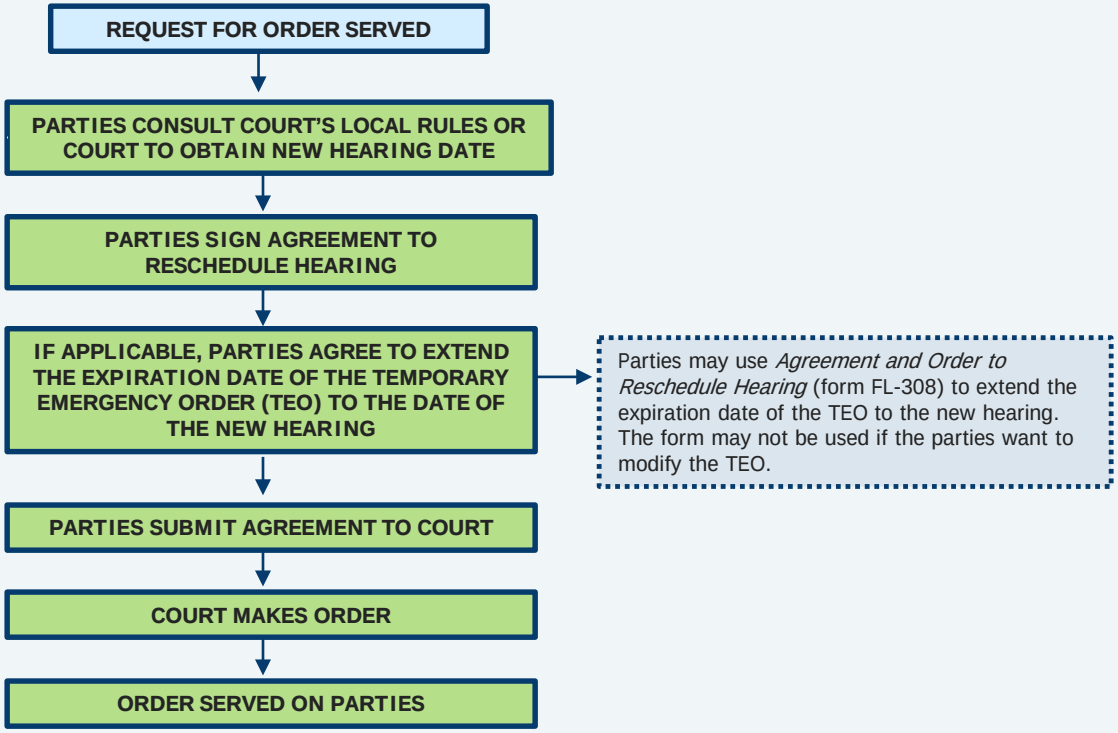
A Rescheduling a Request for Order: Not Served



B Rescheduling a Request for Order: Served/No agreement



C Rescheduling a Request for Order: Agreement



Item number: 33

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Certification of Statewide Uniform Guideline Support Calculators

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

Staff contact (name, phone and e-mail): Gary Slossberg, 916-263-0660, gary.slossberg@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/19/18
Project description from annual agenda: Amend rule 5.275 to require that child support calculators include the low-income adjustment range on the first page and to conform fee requirements for child support calculator submission to the Judicial Council with current practice of the council not to accept payment of these fees.

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

SPR19-33

Title
Family Law: Certification of Statewide Uniform Guideline Support Calculators

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.275

Proposed Effective Date
January 1, 2020

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

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

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending California Rules of Court, rule 5.275, to require guideline child support calculators to display the low-income adjustment range on the first page of the calculator results printout, if applicable per Family Code section 4055(b)(7), and to delete the requirement to submit an application form and fee for certification.

Background

Family Code section 3830 mandates that courts may use only guideline child support software that "conforms to rules of court adopted by the Judicial Council prescribing standards for the software." These standards are established by rule 5.275 (adopted as rule 1258). Since the rule's adoption in December 1993, the Judicial Council each year has certified guideline child support software that meets the standards. Under rule 5.275(c), the certifications last for one year, and then the software must be recertified to continue to be approved for court use.

Family Code section 4055(b)(7) states that there is a rebuttable presumption that obligors with a net monthly income of less than $1,500 (adjusted annually for cost-of-living increases) should be entitled to a low-income adjustment to reduce their child support obligation. Per Family Code section 4055(c), the low-income adjustment is displayed on guideline child support software programs as a range, with the high end of the range being the unadjusted guideline support amount and the low end being the lowest amount of support allowed per Family Code section 4055(b)(7).

The *Review of Statewide Uniform Child Support Guideline 2017* observed, based on the review of case files and discussions with focus group participants, that the application of the low-income adjustment is inconsistent among judicial officers and that uniformity in how the low-income adjustment range is displayed on guideline child support calculators could lead to more consistency in its application. Family Code section 4055(c) does not specify how the range is to be displayed. Consequently, because the six currently approved guideline child support software programs vary in how each displays the low-income adjustment range, the range may be more apparent on some programs than on others, which potentially is one of the causes of the inconsistent application of the low-income adjustment. Requiring all printouts of guideline calculator results to display the low-income adjustment range on the first page should serve to remedy this problem. Because some calculators offer multiple types of reports to display the calculator results, the proposed rule would mandate that the low-income adjustment range be displayed only on the first page of the report that shows the user inputs. This type of report generally is the most common type used to show the guideline child support amount for court proceedings.

Additionally, rule 5.275(i) requires software developers to complete and submit an application form supplied by the Judicial Council, along with the application fee of $250, to be certified. For the past several years, the Judicial Council's AB 1058 Program has been responsible for the certification of software. In practice, developers wishing to have their guideline child support software certified have communicated directly with AB 1058 Program staff, rather than through an application form. Moreover, because the AB 1058 Program is federally funded, any fees received would have to be forwarded to the federal government, rather than being available to offset the costs of certifying the software. As such, the AB 1058 Program has returned any application fees submitted. To align with current practice, the committee proposes deleting subdivision (i) to remove the requirement to submit an application form and fee to the Judicial Council to be certified.

The Proposal

The committee recommends the following specific changes:

- Amend rule 5.275(b) to add a provision requiring the printout of the calculation results to display the range of the low-income adjustment as permitted by Family Code section 4055(b)(7) on the first page of the results, if the low-income adjustment applies.
- Delete rule 5.275(i) to remove the requirement for guideline software developers to submit an application form supplied by the Judicial Council and a fee for certification of the software.

Alternatives Considered

The committee considered making no changes to rule 5.275. Adding a provision requiring the low-income adjustment range to be displayed on the first page of the results printout would require some developers to make programmatic changes to their software. If making these changes were overly burdensome for some developers, they might stop providing their product to

California. Before formulating this proposal, staff reached out to the six current guideline calculator software developers. None expressed any concerns with adjusting their programs to display the low-income adjustment range on the first page of the printout. As such, the committee determined that adding this requirement to rule 5.275 did not appear to be burdensome to the developers and should serve to increase consistency in the application of the low-income adjustment.

The committee also considered maintaining subdivision (i) of the rule, which requires developers to submit an application form and $250 fee to have their software certified. Given the challenges for a federally funded program to accept a fee and given the program's current practice of not using a specific application form, the committee opted to propose deleting the subdivision to align with current practice.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch.

Request for Specific Comments

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

- Are there specific changes that would improve the proposed rule? If so, please specify the recommended changes.
- Does the proposal appropriately address the stated purpose?
- What is the impact of this proposal on low- and moderate-income persons?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.275, at page 5
2. Link A: Family Code section 4055, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4055.&lawCode=FAM*
3. Link B: Family Code section 3830, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3830.&lawCode=FAM*

Rule 5.275 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.275. Standards for computer software to assist in determining support

**(a) * * *

(b) Standards

The standards for computer software to assist in determining the appropriate amount of child or spousal support are:

(1)–(5) * * *

(6) The printout of the calculator results must display, on the first page of the results, the range of the low-income adjustment as permitted by Family Code section 4055(b)(7), if the low-income adjustment applies. If the software generates more than one report of the calculator results, the range of the low-income adjustment only must be displayed on the report that includes the user inputs.

~~(6)~~ (7) The software or a license to use the software must be available to persons without restriction based on profession or occupation.

~~(7)~~ (8) The sale or donation of software or a license to use the software to a court or a judicial officer must include a license, without additional charge, to the court or judicial officer to permit an additional copy of the software to be installed on a computer to be made available by the court or judicial officer to members of the public.

(c)–(h) * * *

~~**(i) Application**~~

~~An application for certification must be on a form supplied by the Judicial Council and must be accompanied by an application fee of $250.~~

~~(j)~~ (i) Acceptability in the courts

(1)–(2) * * *

Item number: 34

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Duty of Judge Hearing Matter per Family Code Sections 4521(a), 4252(b)(7) [Amend Cal. Rules of Court, rule 5.305(b)]

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

Staff contact (name, phone and e-mail): John Henzl, 415-865-7607, john.henzl@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: AB 1058 Program Rule & Statutory Changes, Item 9(c): Amend rule 5.305(b) to clarify the requirements and timeframe for Title IV-D cases heard by a judge to be directed to the calendar of a child support commissioner.

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

SPR19-34

Title
Family Law: Duty of Judge Hearing Matter Under Family Code Sections 4521(a), 4252(b)(7)

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.305(b)

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amendments to rule 5.305(b) governing the circumstances under which a judge may hear a title IV-D matter when exceptional circumstances prevent a child support commissioner from doing so. The amendments would more clearly define the roles of the judge and the court at the hearing, as authorized in the Family Code.

Background

Assembly Bill 1058 (Stats. 1996, ch. 957) created a statewide court program to expedite the processing of child support cases receiving services from the local child support agency (i.e., "title IV-D matters"). As part of that legislation, Family Code sections 4251–4253 were enacted to establish the parameters of the child support commissioner program, including when title IV-D matters may be heard by a judge instead of a child support commissioner. Specifically, Family Code section 4251(a) states that a judge may hear a title IV-D matter only if a child support commissioner is unavailable "due to exceptional circumstances." Further, Family Code section 4252(b)(7) dictates that the Judicial Council shall "[a]dopt rules that define the exceptional circumstances."

Effective July 1, 1997, California Rules of Court, rule 1280.1[1] was adopted to implement this directive and define the exceptional circumstances under which a judge may hear a title IV-D matter. In addition to defining "exceptional circumstances," the rule also states in the subdivision entitled "Duty of judge hearing matter" that a judge "must make an interim order and refer the matter to the commissioner for further proceedings." (Cal. Rules of Court, rule 5.305(b).) This provision has been interpreted inconsistently statewide. In some courts, the judge's order is treated as an interim order and the motion is subsequently calendared to be heard by the title IV-D child support commissioner when he or she is available. In other courts, the order is treated as final, and only later motions are calendared for hearing by the title IV-D child support commissioner.

Interpreting the rule as requiring the judge to make an interim order and requiring referral to the title IV-D child support commissioner for further action places the subordinate judicial officer in the position of reviewing a judge's order and unnecessarily incurs additional costs by the courts, parties, and local child support agency. Finally, as stated above, Family Code section 4251(a) provides that a judge may hear a title IV-D matter only if a child support commissioner is unavailable "due to exceptional circumstances." However, nothing in the statute requires that the judge only make an interim order or that a commissioner review that order at a follow-up hearing.

The Proposal

The Family and Juvenile Law Advisory Committee proposes amending rule 5.305(b) to clarify the duties of a judge hearing a title IV-D matter because of exceptional circumstances. The rule would be revised to delete the word "interim" and simply state that the judge must make an "order." Additionally, the requirement that the judge refer the matter back to a child support commissioner for "further proceedings" would be removed, with the rule instead stating that "any future proceedings" must be heard by a child support commissioner, as long as the local child support agency remains a party to the case.

The proposed amended rule would benefit the judicial branch, attorneys, self-represented litigants, and the local child support agency by eliminating the requirement for the setting of a second hearing, thereby eliminating the increased time and costs that an additional hearing entails. The requirement of setting a second hearing is especially burdensome for self-represented litigants, who make up the vast majority of case participants in title IV-D matters and often must take time off from work, arrange childcare, and pay for transportation or parking to attend such court hearings.

Alternatives Considered

Revisions to rule 5.305 are needed to ensure uniformity statewide with regard to the authority of judges to hear title IV-D motions when the child support commissioner is unavailable and to eliminate the need for a second court hearing. The committee considered either taking no action

[1] Effective January 1, 2003, this rule was renumbered to rule 5.305.

at this time or circulating the rule to request specific comment on the proposed changes. The committee decided to recommend circulation of the proposal to obtain suggestions for alternative language and give courts notice regarding this change in court operations and procedures.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in some initial costs to the courts to train judicial officers and court staff regarding the amended rule. However, the committee expects that the changes will reduce costs in the long term for the courts, parties, and local child support agencies, by simplifying procedures and reducing the number of court hearings on calendar.

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. Cal. Rules of Court, rule 5.305, at page 4
2. Fam. Code, §§ 4250–4253, *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=2.&chapter=2.&article=4*

Rule 5.305 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)

(a) * * *

(b) Duty of judge hearing matter

A judge hearing a title IV-D support action under this rule and Family Code sections 4251(a) and 4252(b)(7) must make an ~~interim~~ order ~~and refer the matter to the commissioner for further proceedings~~. As long as a local child support agency is a party to the action, any future proceedings must be heard by a commissioner, unless the commissioner is unavailable because of exceptional circumstances.

(c) * * *

Item number: 35

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Registration of Support Order (adopt form FL-445; revise forms FL-570 and FL-575)

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

Staff contact (name, phone and e-mail): John Henzl, 415-865-7607, john.henzl@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: Item 9, AB 1058 Program Rule and Statutory Changes. Consider implementation of rule changes and sponsored legislation to improve the fair, efficient and effective operation of the AB 1058 child support program in the courts.

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

SPR19-35

Title
Family Law: Registration of Support Order

Proposed Rules, Forms, Standards, or Statutes
Adopt form FL-445; revise forms FL-570 and FL-575

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes a new form, *Request for Hearing Regarding Registration of California Support Order* (form FL-445), and revisions to *Notice of Registration of Out-of-State Support Order* (form FL-570) and *Request for Hearing Regarding Registration of Support Order* (form FL-575) to make the forms suitable for use by all parties to the action and to correct inadvertent omissions.

Background

The Judicial Council revised forms FL-570 and FL-575 effective January 1, 2016, to replace the term "Registration Statement" with "Letter of Transmittal Requesting Registration" to reflect the new name given to the federal form revised by the Office of Child Support Enforcement (OCSE). However, as detailed below, the forms are not suitable for use by parties or the courts when an individual registers a support order. Additionally, while form FL-575 is used to request a hearing regarding the registration of a California support order or an out-of-state support order, the committee concluded a separate form should be available to contest the two different types of registration.

The Proposal

A new form would be adopted, *Request for Hearing Regarding Registration of California Support Order* (form FL-445), to request a hearing regarding the registration of a California

support order, instead of form FL-575. *Notice of Registration of Out-of-State Support Order* (form FL-570) would be revised to replace references to federal child support forms with descriptive references that could refer to the relevant federal forms or paperwork submitted by an individual and make other technical changes. *Request for Hearing Regarding Registration of Support Order* (form FL-575) would be revised to replace references to federal child support forms with descriptive references that could refer to the relevant federal forms or paperwork submitted by an individual and to make the form only for use to request a hearing regarding the registration of an out-of-state support order.

Separate forms to contest registration of California or out-of-state support orders

If a support order is entered in one jurisdiction, but then one or both parents move to a different jurisdiction, the support order can be registered for enforcement purposes in the new jurisdiction of the support obligor. Consequently, it is common practice for support orders from other counties in California, other states within the U.S., or even from foreign countries to be registered in California courts.

California support orders can be registered (from one county to another county) by a local child support agency (LCSA) or an individual party. (Fam. Code, §§ 5601, 5602.) If the named obligor wishes to contest the registration of the support order, currently form FL-575 must be filed with the court. This form was originally created to contest either the registration of a California support *or* the registration of an out-of-state support order. Consequently, the current form contains defenses to both types of registration listed on the same form: item 2a applies only to California orders, items 2b–2d and 2g apply only to out-of-state orders, and items 2e and 2f apply to both types of orders. However, while the grounds for contesting each type of registration are similar, they are not identical.

Family Code section 5603(a) states that the defenses available to contest the registration of a California support order "shall be limited strictly to the identity of the obligor, the validity of the underlying … order, or the accuracy … of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order." Additionally, if the underlying support order has been appealed, the court must stay enforcement until the appeal process has concluded. (Fam. Code, § 5603(b).) These limited defenses to the registration of a California support order are listed on the new proposed form FL-445, which also includes instructions regarding filing and service specific to contesting this type of registration.

Additionally, the committee proposes revising form FL-575 to make it only for use to contest the registration of out-of-state orders and to revise the form title accordingly. Item 2a on form FL-575, which states, "I am not the Obligor named in the Letter of Transmittal Requesting Registration," has been removed, as this defense is only applicable to contest the registration of a California support order. Finally, minor technical changes are proposed to the attached information sheet, such as replacing "attorney" with the more plain language "lawyer" and replacing the term "notice or statement of registration" with "notice of registration." (This is

because "statement of registration" refers to forms FL-440 and FL-650, which are only used to register a California support order, not an out-of-state order.)

Replacing references to federal forms on forms FL-570 and FL-575

The framework for registering out-of-state support orders is set forth in the Uniform Interstate Family Support Act (UIFSA) as amended in 2008 (adopted in California as Fam. Code, §§ 5700.101–5700.905). In addition to submitting a certified copy of the support order, "a letter of transmittal to the tribunal requesting registration and enforcement" must be included, along with a sworn statement stating "the amount of any arrearage" and identifying information of the obligor, such as address, social security number, employer information, etc., if known. (Fam. Code, § 5700.602.)

When a court receives a request to register an out-of-state support order, it is required to send notice to the nonregistering party. (Fam. Code, § 5700.605.) The vast majority of these requests come from an LCSA after receiving an intergovernmental request from a child support agency in a different state, which includes a copy of the support order and various federal forms. However, on occasion courts also receive requests to register support orders from individuals. In fact, the comments to section 603 of UIFSA state:

> UIFSA provides that either the obligor, the obligee, or a support enforcement agency, may register a support order of another state or a foreign support order. In fact, even a stranger to the litigation, for example a grandparent or an employer of an alleged obligor, may register a support order.

While UIFSA contemplates that individuals, not just LCSAs, will register out-of-state support orders, forms FL-570 and FL-575 in their current format can only be used when an LCSA is the registering party. This is because the forms make reference multiple times to two different OCSE forms, *Letter of Transmittal Requesting Registration* (five times on form FL-570 and two times on form FL-575) and *Personal Information Form* (one time on form FL-570), without making any mention of the paperwork that could instead be submitted by an individual. Therefore, when an individual registers an out-of-state support order, there is no corresponding Judicial Council form that is appropriate for the courts to give the required notice to the nonregistering party, nor is there a form for a party to use to contest the registration in the same scenario.

The committee proposes making all references to the required letter of transmittal on the current forms lowercase, so that the forms would state "letter of transmittal requesting registration." This way, the reference is descriptive of *any* letter of transmittal received by the court (instead of being limited to just the federal form by the same name) and the forms could then be used if the request to register was made by an LCSA or an individual using their own letter of transmittal. Additionally, the reference to the federal *Personal Information Form* in item 7 of form FL-570 would be removed.

Technical revisions to form FL-570

As stated above, when registering an out-of-state support order, the request must include a sworn statement that includes the amount of any alleged arrearage. Item 3 of form FL-570 states, "The amount of arrears is specified in section 1 on the attached Letter of Transmittal Requesting Registration." While the amount of support in arrears is listed in section 1 of the OCSE transmittal form, this information might not be listed in a letter of transmittal submitted by an individual; instead an individual could just state the amount of arrearage in a separate sworn affidavit. The committee proposes revising item 3 of the form to read, "The amount of arrears is specified in the attached letter of transmittal requesting registration or sworn statement."

Finally, if an individual registers a support order, the court would not be required to return a copy of the paperwork to the LCSA, but would instead only return a conformed copy to the registering party. Therefore, the committee proposes revising item 8 in the Clerk's Certificate of Mailing section to state, "A copy was sent to the registering party on *(date)* …"

Alternatives Considered

The committee considered keeping form FL-575 as a dual-use form to contest the registration of a California or out-of-state support order, with additional warning language added regarding the defenses available to each type of registration. However, the committee instead thought it preferable to create a separate form to contest each type of registration. Additionally, the committee considered revising the references to federal forms on forms FL-570 and FL-575 as technical changes, but chose to circulate both forms for comment in order to obtain suggestions for alternative language and to give the public, justice partners, and the courts proper notice that the forms would be modified.

Fiscal and Operational Impacts

The proposal would require courts to create copies of the new and updated forms but, because the forms are used on a case-by-case basis, there may be no additional printing costs imposed. Additionally, any increased costs would be offset by the time saved by the courts now being able to use form FL-570 to give the required notice to the nonregistering party, where previously no Judicial Council form existed.

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?
- Do forms FL-445 and FL-575 adequately set forth the defenses available to contest each type of registration of support order?

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 FL-445, FL-570, and FL-575, at pages 6–13
2. Fam. Code, §§ 5600–5604, *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=5.&chapter=8.&article=9*
3. Fam. Code, §§ 5700.601–5700.604, *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=6.&chapter=6.&article=1*
4. Fam. Code, §§ 5700.605–5700.608, *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=6.&chapter=6.&article=2*

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER	CASE NUMBER:

NOTICE OF HEARING

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

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

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

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

   a. ☐ I am not the Obligor (the parent ordered to pay support) named in the statement for registration.

   b. ☐ the support order attached to the statement for registration is not a valid order.

   c. ☐ the amount of arrears (back support) listed in the paperwork attached to the statement for registration is incorrect. The correct amount of arrears is *(specify amount):* $ ☐ Supporting documents attached.

   d. ☐ the order has been appealed, and the appeal is pending or the order has been stayed by another court.

   e. ☐ Other *(specify):*

3. Explain the facts in support of your request:

   ☐ Contained in the attached declaration.

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Form Adopted for Mandatory Use
Judicial Council of California
FL-445 [New January 1, 2020]

Family Code, § 5603
www.courts.ca.gov

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER

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

Please follow these instructions to complete the *Request for Hearing Regarding Registration of California Support Order* (form FL-445) if you do not have a lawyer representing you. Your lawyer, if you have one, should complete this form. You can get free help with this form from the family law facilitator in your county.

This form should be used if you received a notice of registration telling you that a California support order is being registered in a California court but you do not want that support order registered. To request a hearing regarding the registration of an out-of-state support order use form FL-575. To request a hearing regarding the registration of an International Hague Convention support order, use form FL-594.

You must file your completed request for hearing with the court clerk. The address of the court clerk is the same as the one shown for the superior court on the notice of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file a *Request to Waive Court Fees* (form FW-001). You can get this form from the court clerk, the California Courts website at *www.courts.ca.gov*, or the family law facilitator in your county (who can also assist you with the application). Provide an original *Request for Hearing Regarding Registration of California Support Order* and any attachments plus at least three copies for filing. Keep copies of the filed request and any attachments for service and keep the other copy for your records.

Someone other than you, who is at least 18 years old, must serve (deliver) copies of the request on the other parent, or their lawyer if they have one in this case. A copy must also be served on the local child support agency, if that office is providing services in the case. The paperwork must be served at least **15 days** before the hearing date. (**Note:** If the paperwork is served by mail, there are special rules regarding this service deadline.) Be sure to file your *Proof of Service* with the court clerk. More information about how to serve legal paperwork can be found on the California Courts website at *www.courts.ca.gov/selfhelp-serving.htm* or from the family law facilitator in your county.

INSTRUCTIONS FOR COMPLETING THE *REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER* (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN BLACK OR BLUE INK):

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

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

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

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

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

Instructions for Numbered Paragraphs

1. Leave this section blank. The court clerk will fill in the date, time, and location of the hearing.

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

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

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

b. Check this box if the support order attached to the statement for registration you received is not a valid order. You will need to explain to the court why you believe the order is not valid in item 3 of the form.

c. You should check this box if you disagree with the amount of arrears (back support) listed in the paperwork attached to the statement for registration. You must write in the correct amount of arrears in the space provided. If you attach any documents to support your position, check the applicable box. (**Note:** This is not a valid defense if the amount of arrears listed in the paperwork attached to the statement for registration was already determined by another court.)

d. Check this box if you have appealed the order and the appeal is still pending or if the order has been stayed (temporarily stopped) by another court to give you time to appeal the order.

e. Check this box if you have another reason to object to the registration of the support order and state your reason in the space provided.

3. You must fully explain all of the reasons that you checked in item 2 of this request. If you need more space, you may attach additional sheets. Check the box labeled “Contained in the attached declaration" if you are attaching a declaration or additional pages explaining your reasons for this request.

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

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT 2** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
NOTICE OF REGISTRATION OF OUT-OF-STATE SUPPORT ORDER ☐ **Support Order** ☐ **Income Withholding Order**	CASE NUMBER:

1. To *(name)*:

2. You are notified that an ☐ Out-of-State Support Order ☐ Out-of-State Order for Income Withholding has been registered with this court. A copy of the order and the letter of transmittal requesting registration are attached.

3. The amount of arrears is specified in the attached letter of transmittal requesting registration or sworn statement.

   The amount of the alleged arrears is: as of .

   ☐ The arrears have a U.S. dollar equivalence of as of . *(Only applicable to foreign support orders.)*

4. The registered order is enforceable in the same manner as a support order made by a California court as of the date that the letter of transmittal requesting registration and order are filed.

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

6. If you fail to contest the validity or enforcement of the attached order within 20 days after notice, the order will be confirmed by the court and you will be unable to contest any portion of the order including the amount of arrears as specified in the letter of transmittal requesting registration or sworn statement.

CLERK'S CERTIFICATE OF MAILING

7. I certify that I am not a party to this cause and that a copy of the out-of-state order, and the documents and relevant information accompanying the order, were sent to the person named in item 1 by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the person named in item 1 only at the address listed in the documents and relevant information accompanying the order, sealed, and deposited with the U.S. Postal Service

   at *(place)*:

   on *(date)*:

8. A copy was sent to the registering party on *(date):*

Date: Clerk, by _____, Deputy

Form Approved for Optional Use
Judicial Council of California
FL-570 [Rev. January 1, 2020]

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

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT 2** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF OUT-OF-STATE SUPPORT ORDER	CASE NUMBER:

NOTICE OF HEARING

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

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

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

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

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

b. ☐ the support order was obtained by fraud.

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

d. ☐ the order has been stayed pending appeal.

e. ☐ the amount of arrears (back support) listed in the letter for transmittal requesting registration or sworn statement is incorrect. The correct amount of arrears is *(specify amount):* $ ☐ Supporting documents attached.

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

g. ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

Form Adopted for Mandatory Use
Judicial Council of California
FL-575 [Rev. January 1, 2020]

Family Code, §§ 5700.606, 5700.607
www.courts.ca.gov

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

CLERK'S CERTIFICATE OF MAILING

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

at *(place)*: , California,

on *(date)*:

Date: Clerk, by , Deputy

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

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

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

This form should be used if you received a notice of registration telling you that an out-of-state support order is being registered in a California court but you do not want that support order registered. To request a hearing regarding the registration of an International Hague Convention support order, use form FL-594. To request a hearing regarding the registration of a California support order, use form FL-445.

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

INSTRUCTIONS FOR COMPLETING THE *REQUEST FOR HEARING REGARDING REGISTRATION OF OUT-OF-STATE SUPPORT ORDER* (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN INK):

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

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

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

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

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

1. Leave this section blank. The court clerk will fill in the date, time, and location of the hearing.

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

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

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

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

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

   e. You should check this box if you disagree with the amount of arrears (back support) listed in the letter of transmittal requesting registration or sworn statement. You must write in the correct amount of arrears in the space provided.

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

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

   g. Check this box if you have another reason to object to the registration of the support order and then specify the other reason.

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

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

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

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/Plaintiff, Respondent/Defendant, Other Parent and the local child support agency if that office is providing services in the case.

You must print the name and address in the brackets of the Petitioner/Plaintiff, Respondent/Defendant, Other Parent, and the local child support agency if that office is providing services in the case. The names are the same as those at the top of the page. You must also provide the court clerk with stamped envelopes addressed to each of the parties listed in the brackets.

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

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Parentage Rules and Forms (Amend rules 5.350 and 5.635; revise forms FL-100, FL-120, FL-170, FL-200, FL-220, FL-230, FL-235, FL-250, FL-260, FL-270, FL-272, FL-273, FL-274, FL-276, FL-280, FL-281, FL-285, FL-290, FL-300-INFO, FL 600, FL 610, FL 615, FL-686, and FL 694)

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

Staff contact (name, phone and e-mail):
John Henzl, 415-865-7607, john.henzl@jud.ca.gov
Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Item 1(f),
AB 2684 (Bloom) Parent and child relationship (Ch. 876, Statutes of 2018): This bill updates the Uniform Parentage Act to: ensure equal treatment of same-sex couples; update provisions regarding genetic testing for parentage; and establish a process for children conceived from donated sperm or egg donors to receive medical information of the donor, and, if the donor agrees, identifying information.

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

SPR19-36

Title
Family Law: Changes to Parentage Rules and Forms

Proposed Rules, Forms, Standards, or Statutes
Amend rules 5.350 and 5.635; revise forms FL-100, FL-120, FL-170, FL-200, FL-220, FL-230, FL-235, FL-250, FL-260, FL-270, FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, FL-290, FL-300-INFO, FL-600, FL-610, FL-615, FL-686, and FL-694

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

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending rules 5.350 and 5.635 and revising forms FL-100, FL-120, FL-170, FL-200, FL-220, FL-230, FL-235, FL-250, FL-260, FL-270, FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, FL-290, FL-300-INFO, FL-600, FL-610, FL-615, FL-686, and FL-694. The revisions are necessary to comply with amendments to the Family Code made by Assembly Bill 2684 (Bloom; Stats. 2018, ch. 876) that replaced the word "paternity" with "parentage" and made statutes gender neutral when possible.

The Proposal

The Family and Juvenile Law Advisory Committee proposes that the Judicial Council,effective January 1, 2020:

1. Amend rules 5.350 and 5.635 to replace current text with the terms "voluntary declaration of parentage or paternity," "parentage," and "genetic testing" as needed;

2. Revise the following forms by replacing current text with the terms "voluntary declaration of parentage or paternity," "parentage," and "genetic testing" as needed:
   - *Petition—Marriage/Domestic Partnership* (form FL-100);
   - *Response—Marriage/Domestic Partnership* (form FL-120);
   - *Declaration for Default or Uncontested Dissolution or Legal Separation* (form FL-170);
   - *Petition to Establish Parental Relationship* (form FL-200);
   - *Response to Petition to Establish Parental Relationship* (form FL-220);
   - *Declaration for Default or Uncontested Judgment* (form FL-230);
   - *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235);
   - *Judgment (Uniform Parentage—Custody and Support)* (form FL-250);
   - *Petition for Custody and Support of Minor Children* (form FL-260);
   - *Response to Petition for Custody and Support of Minor Children* (form FL-270);
   - *Notice of Motion to Set Aside Judgment of Paternity* (form FL-272);
   - *Declaration in Support of Motion to Set Aside Judgment of Paternity* (form FL-273);
   - *Information Sheet for Completing Notice of Motion to Set Aside Judgment of Paternity (Forms FL-272 and FL-273)* (form FL-274);
   - *Response to Notice of Motion to Set Aside Judgment of Paternity* (form FL-276);
   - *Order After Hearing on Motion to Set Aside Judgment of Paternity* (form FL-278);
   - *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity* (form FL-280);
   - *Information Sheet for Completing Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity (Form FL-280)* (form FL-281);
   - *Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity* (form FL-285);
   - *Order After Hearing on Motion to Set Aside Voluntary Declaration of Paternity* (form FL-290);
   - *Information Sheet for Request for Order* (form FL-300-INFO);
   - *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-600);
   - *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610);
   - *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* (form FL-615);
   - *Proof of Service by Mail* (form FL-686); and
   - *Advisement and Waiver of Rights for Stipulation* (form FL-694).
3. Revise forms FL-273, FL-274, FL-280, and FL-281 to reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity.

4. Revise forms FL-272, FL-276, FL-280, and FL-285 by changing the layout and language of the forms to make them more accessible and provide better clarity to litigants;
5. Revise and rename forms FL-272, FL-273, FL-274, FL-276, Fl-278, FL-280, FL-281, FL-285, and FL-290 by rephrasing "set aside" as "cancel (set aside)"; and
6. Revise the following forms to include gender-neutral references to the parties and children: FL-100, FL-120, FL-200, FL-220, FL-260, FL-270, and FL-300-INFO.
7. Revise the following forms to make them consistent with current law and the formatting of other nongovernmental family law forms: FL-100, FL-120, FL-170, FL-200, FL-220, FL-260, and FL-270.

Changes based on AB 2684

The changes made to the Family Code by AB 2684 that require amending rules and revising various forms are as follows:

- Referring to any blood tests or genetic tests to determine paternity as "genetic testing (for parentage)";
- Redefining the marital presumption of parentage by replacing references to "husband" and "wife" with "spouse";
- Changing the name of the voluntary declaration of paternity to "voluntary declaration of parentage";
- Redefining which parents may execute a voluntary declaration of parentage; and
- Amending the procedures and legal standards for setting aside a voluntary declaration of parentage.

These changes are consistent with other recent amendments to the Family Code that replaced the word "paternity" with "parentage" and an overall effort by the Legislature to make statutes gender neutral, when possible.

Currently, in order for a father to be named on the birth certificate of a child born in California outside of marriage, the mother and father both must sign a voluntary declaration of paternity, which is then filed with the California Department of Child Support Services (DCSS). Commencing January 1, 2020, this DCSS form will be called a "voluntary declaration of parentage." This form is referenced multiple times on various Judicial Council forms. However, for many years to come litigants will still come forward for relief from the courts with the old version of the form, the "voluntary declaration of paternity." Therefore, the committee proposes replacing all references in rules and on the forms with "voluntary declaration of parentage or paternity." This way, both versions of the voluntary declaration will be included.

AB 2684 also removed all references to blood tests and instead uses the term "genetic testing." While any references to blood tests already have been removed from most family law forms in order to ensure greater consistency throughout the forms, the committee also proposes replacing the terms "genetic tests" and "parentage tests" with "genetic testing." Additionally, the council has already replaced "paternity" with "parentage" on many forms; however, the term still

remains on several other forms. As such, the committee is also proposing replacing "paternity" with "parentage" as needed.

The great majority of the proposed revisions are technical in nature and entail simply replacing old terms with "voluntary declaration of parentage or paternity," "parentage," or "genetic testing," as applicable. However, AB 2684 also significantly altered the rules regarding voluntary declarations of parentage or paternity, as follows:

- Expands who is eligible to sign a voluntary declaration of parentage to include not only an unmarried mother and the only possible genetic parent, but also a mother who gave birth to the child using assisted reproduction and the intended parent.
- Adds, to the list of when a voluntary declaration of parentage is void, that the child has a presumed parent, a court has entered a judgment of parentage, another person has signed a valid declaration of parentage, the child has a parent as the result of assisted reproduction other than the signatories, the person seeking to establish parentage is a sperm or ova donor, or a person asserts that they are a parent and the child was not conceived through assisted reproduction.
- Revises what must be on the voluntary declaration of parentage developed by the DCSS to comply with the changes in this legislation.
- Limits the ability of signatories to challenge a voluntary declaration of parentage after the existing 60-day rescission period to challenges based on fraud, duress, and material mistake of fact, consistent with federal law, with the requirement that any such challenge be brought within two years of the effective date of the voluntary declaration. (This limit does not apply to a voluntary declaration that is void.) Clarifies that, unless the voluntary declaration is void, the existing process to challenge a voluntary declaration of parentage may only be brought by a person who is not a signatory of the declaration and who has standing, is an alleged parent who is not a donor, or is a presumed parent.
- Provides that, by signing a voluntary declaration of parentage, a signatory submits to personal jurisdiction in California in an action challenging the declaration. Prevents the court from suspending legal responsibilities arising from the declaration, including the duty to pay child support, during the pendency of a challenge to the declaration. If the court order in the challenge to the declaration is at variance with the child's birth certificate, the legislation requires the court to order a new birth certificate.[1]

Technical changes to forms

As stated above, the vast majority of the proposed revisions are technical in nature and entail simply replacing the old terms with the new terms. The committee proposes revising forms FL-600, FL-610, FL-615, FL-686, and FL-694 to reflect these changes, with no other major changes. The committee also proposes revising forms FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, and FL-290 to reflect these technical changes and proposes further revisions as described below.

[1] Assem. Com. on Judiciary, Analysis of Assem. Bill 2684 (2017–18 Reg. Sess.) as amended August 24, 2018, p. 2.

Making forms more accessible

Given the high percentage of self-represented litigants in the area of family law, one of the committee's longstanding goals is to make family law forms easier to understand by improving the layout of forms and using more plain language. With this goal in mind, the committee proposes revising several forms, as follows:

- Inserting an instruction box just below the case caption giving the filer basic instructions about the purpose of the form and how to file and serve the paperwork;
- Substituting "TO ALL PARTIES" for "TO *(name)*" so that the filer need not insert to whom the motion is being directed, leaving just the hearing information to be inserted by the court clerk;
- Replacing the term "set aside" with the more easily understood "cancel (set aside)";
- Inserting common-sense definitions of "marital presumption of parentage" and "guardian ad litem" where these terms are mentioned; and
- Including hyperlinks to other forms and content on the Judicial Council website that are referred to on the forms.

The committee proposes revising forms FL-272, FL-274, FL-280, and FL-285, as described above. Additionally, forms FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, and FL-290 were retitled and revised by changing the term "set aside" to "cancel (set aside)." Moreover, commencing January 1, 2020, the law regarding setting aside a voluntary declaration of parentage will be listed in Family Code sections 7576 and 7577, rather than Family Code section 7575(c), where it currently resides. Therefore, any references in the footers of the forms to section 7575(c) have been replaced with references to sections 7576 and 7577.

Substantive changes to set aside rules (forms FL-273 and FL-280)

AB 2684 does substantially change the procedures and legal standards surrounding a request to set aside a voluntary declaration of parentage. Perhaps the biggest change is that the signatories of the voluntary declaration will no longer be able to request a set-aside under the grounds listed in Code of Civil Procedure section 473(b), but instead will only be able to request a set-aside based on fraud, duress, or material mistake of fact. Additionally, any such request must be filed by a signatory within two years of the effective date of the voluntary declaration. (If both signatories are adults when signing the form, the effective date is the date the form is filed with DCSS.) In general, the current set-aside rules are still the same for a nonsignatory to request relief. However, the local child support agency was removed from the statute as being one of the parties that could bring such a motion. Furthermore, when a nonsignatory files a motion to set aside, Family Code section 7577(e) states that notice must be provided to the signatories of the voluntary declaration and "any person entitled to notice under section 7635" (i.e., natural parent, presumed parent, and alleged genetic parent). Joinder is also mandatory for "any person who asserts a claim to parentage" and "every signatory" of the declaration. (Fam. Code, §§ 7577(e), 7578(a).)

The new set-aside rules have essentially created three separate classes of would-be filers: signatories of a voluntary declaration signed before January 1, 2020; signatories of a voluntary

declaration signed on or after January 1, 2020; and nonsignatories. The committee proposes revising form FL-280 and item 4c of form FL-273 by making the forms more accessible as described above, and as follows:

- Inserting the new grounds for relief, with plain language definitions included in parentheses;
- Keeping the old grounds for relief; and
- Removing the section where the filer states, "I have complied with the time limits for filing this request to set aside …" (form FL-280, item 10).

The committee felt that trying to create a form to specifically address the grounds for relief and time limits for each separate class of filer would make the forms too cumbersome and difficult to understand. Instead, the new grounds for relief are listed on the forms first, followed by the current grounds for relief with the following warning language inserted before the current defenses: "*The following reasons apply only to voluntary declarations signed before January 1, 2020* ***or*** *if you did not sign the declaration.*"

Amendments to rules 5.350 and 5.635

The committee proposes amending rule 5.350 as follows:

- Replacing "voluntary declaration of paternity" with "voluntary declaration of parentage or paternity";
- Replacing references to Family Code section 7575(c) with sections 7576 and 7577;
- Removing the reference to local child support agency in subdivision (b) to now read that only a "person who has signed a voluntary declaration of parentage or paternity, or another interested party," may file a motion to set aside; and
- Including the new verbiage discussed above for the voluntary declaration and request to cancel (set aside) when referencing the motion *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

The committee proposes amending rule 5.635 as follows:

- Replacing "voluntary declaration of paternity" with "voluntary declaration of parentage or paternity";
- Replacing other references to paternity with "parentage";
- Replacing "genetic tests" with "genetic testing"; and
- Replacing "man" and "father" with "person" and "parent," respectively, in subdivision (c) consistent with prior amendments to Family Code section 7611.

Changes to nongovernmental forms

Making forms gender neutral

AB 2684 amends portions of the Family Code by making it gender neutral (e.g., replacing "paternity" with "parentage" and replacing references to "husband" and "wife" with "spouse" in section 7540). These changes are consistent with other amendments to the Family Code and California statutes in general made by the Legislature, as evidenced by Senate Bill 179 (Atkins;

Stats. 2018, ch. 853) regarding gender identity and Assembly Concurrent Resolution 260 (Stats. 2018, res. ch. 190) regarding the use of gender-neutral language and pronouns.

The committee proposes taking this opportunity to further revise the forms by making them gender neutral in addition to making the revisions required by AB 2684. For example, any references to "his or her" have been removed (e.g., item 12 on form FL-170), as was the requirement of listing the sex of a child on a petition or response (forms FL-100, FL-120, FL-200, FL-220, FL-260, and FL-270). It should be noted that the gender of a child was never included on the governmental child support summons and complaint (FL-600) or answer (FL-610) since the adoption of those forms in 1997.

The committee seeks specific comment about the proposal to change form FL-200, item 1b, and form FL-220, item 2b. In the current form FL-200, item 1b allows the petitioner to identify as "the father." However, this term may be too general, as a person may be a biological father, a presumed father, or an intended parent of a child under Family Code sections 7611 and 7630. Thus, the committee proposes changing both forms to allow a petitioner to specify that the petitioner wants to be determined as "a parent" of the child. In form FL-200, the petitioner will be able to state the reason why the court should make that determination. Specifically, item 1b would be changed to "Petitioner wants to be determined as a parent of the child because *(specify): … .*"

However, not all references to gender-based terms could be removed from the revised forms. This is because, while AB 2684 did make many more sections of the Family Code gender neutral, the terms "previously established father" and "previously established mother" remained intact within the rules for setting aside a judgment of parentage. (See Fam. Code, §§ 7645–7649.5.) In fact, the word "father" appears 30 times in these rules, including references to "alleged father," "genetic father," and "biological father." (*Id.*) Therefore, these terms were not removed from the revised forms, such as form FL-273.

Other changes

The committee proposes additional revisions to some of the nongovernmental family law forms to reflect changes in the law and make them consistent with other forms, as described below:

- FL-170, item 5c, would be revised to reflect an amendment to Family Code section 2110 under Senate Bill 340 (Stats. 2015, ch. 46), which allows a party to waive service of the preliminary declaration of disclosure as well as receipt of a final declaration of disclosure if the respondent was served with a summons by posting under a court order.
- In the titles of forms FL-200 and FL-220, "determine" would be substituted for "establish" with regard to the parental relationship. This change would reflect the use of the term "determine" in the Family Code. It would also cover actions in which a party is seeking to establish or disestablish a parental relationship;
- Form FL-170 would be revised to clarify that a party may only request restoration of a maiden name in an action for dissolution of marriage or nullity under Family Code section 2080;

- Forms FL-200, FL-220, and FL-260 would be revised to replace the term "visitation" with "visitation (parenting time)";
- Forms FL-200 and FL-220 would be revised to refer to mediation as "mediation or child custody recommending counseling";
- Form FL-220 would be revised to indicate that the party completing the form must complete and attach *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105);
- Forms FL-170, FL-200, and FL-220 would be revised to insert check boxes for "Other Parent/Party" that were inadvertently omitted. This will allow a party to request orders affecting the rights or obligations of the other parent/party in the case; and
- Forms FL-170, FL-200, FL-260, and FL-270 would be revised to reorganize the presentation of the information to make the forms easier to complete.

Alternatives Considered

Amendments and revisions to the rules and forms listed above are required to reflect the statutory changes created by AB 2684. The committee considered two alternatives: (1) recommending technical changes directly to the Judicial Council without circulating the rules and forms with the proposed changes for public comment; or (2) circulating the rules and forms to request specific comment on the proposed changes.

The committee chose the second option, as it would enable the committee to obtain suggestions for alternative language and would also give the public, justice partners, and the courts proper notice that the rules and forms would be altered. Additionally, while most of the revisions are technical in nature, the changes to the law regarding setting aside voluntary declarations of parentage are substantive.

Fiscal and Operational Impacts

The committee anticipates that courts would incur some costs to revise forms and add them to their case management systems, train court staff about the revised forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council.

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?
- Do forms FL-273 and FL-280 correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity?
- Should form FL-200, item 1b, and form FL-220, item 2b, be changed to state, "Petitioner wants to be determined to be a parent of the child"?
- Should forms FL-200, FL-220, FL-260 and FL-270 require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court?

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

- Would the proposal provide cost savings? If so, please quantify.
- 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. Rules 5.350 and 5.635, at pages 10–11
2. Forms FL-100, FL-120, FL-170, FL-200, FL-220, FL-230, FL-235, FL-250, FL-260, FL-270, FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, FL-290, FL-300-INFO, FL-600, FL-610, FL-615, FL-686, and FL-694, at pages 12–73
3. Assembly Bill 2684 (Bloom; Stats. 2018, ch. 876), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2684*

Rules 5.350 and 5.635 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.350. Procedures for hearings to set aside voluntary declarations of parentage or paternity when no previous action has been filed

(a) Purpose

This rule provides a procedure for a hearing to set aside a voluntary declaration of parentage or paternity under Family Code sections ~~7575(c)~~ 7576 and 7577.

(b) Filing of request for hearing

A person who has signed a voluntary declaration of parentage or paternity, or ~~a local child support agency~~ another interested party, may ask that the declaration be set aside by filing a completed *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

(c) * * *

(d) Notice of hearing

The person who is asking that the voluntary declaration of parentage or paternity be set aside must serve, either by personal service or by mail, the request for hearing and a blank *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-285) on the other person or people who signed the voluntary declaration of paternity. If the local child support agency is providing services in the case, the person requesting the set-aside must also serve a copy of the request for hearing on the agency.

(e) Order after hearing

The decision of the court must be written on the *Order After Hearing on Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-290). If the voluntary declaration of parentage or paternity is set aside, the clerk must mail a copy of the order to the Department of Child Support Services in order that the voluntary declaration of parentage or paternity be purged from the records.

(f) Use of court file in subsequent proceedings

Pleadings in any subsequent proceedings, including but not limited to proceedings under the Uniform Parentage Act, that involve the parties and child named in the voluntary declaration of parentage or paternity must be filed in the court file that was initiated by the filing of the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

Rule 5.635. Parentage

(a) * * *

(b) Parentage inquiry (§§ 316.2, 726.4)

At the initial hearing on a petition filed under section 300 or at the dispositional hearing on a petition filed under section 601 or 602, and at hearings thereafter until or unless parentage has been established, the court must inquire of the child's parents present at the hearing and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child. Questions, at the discretion of the court, may include the following and others that may provide information regarding parentage:

(1)–(5) * * *

(6) Has a man formally or informally acknowledged ~~paternity~~ parentage, including the execution and filing of a voluntary declaration of parentage or paternity under Family Code section 7570 et seq., and agreed to have his name placed on the child's birth certificate?

(7) ~~Have~~ Has genetic ~~tests~~ testing been administered, and, if so, what were the results?

(8) * * *

(c) Voluntary declaration

If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of Child Support Services, the declaration establishes the ~~paternity~~ parentage of a child and has the same force and effect as a judgment of ~~paternity~~ parentage by a court. A ~~man~~ person is presumed to be the ~~father~~ parent of the child under Family Code section 7611 if the voluntary declaration has been properly executed and filed.

(d)–(h) * * *

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		DRAFT
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	NOT APPROVED BY THE JUDICIAL COUNCIL
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
PETITION FOR ☐ **AMENDED**		CASE NUMBER:
☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership		
☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership		
☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership		

1. **LEGAL RELATIONSHIP** *(check all that apply):*
   a. ☐ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage.This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*

3. **STATISTICAL FACTS**
   a. ☐ (1) Date of marriage *(specify):* (2) Date of separation *(specify):*
   (3) Time from date of marriage to date of separation *(specify):* Years Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent *(specify below):*
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months

4. **MINOR CHILDREN**
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of parentage or paternity. A copy ☐ is ☐ is not attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-100 [Rev. January 1, 2020]

PETITION—MARRIAGE/DOMESTIC PARTNERSHIP
(Family Law)

Family Code, §§ 297, 299, 2320, 2330, 3409
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Petitioner requests that the court make the following orders:

5. **LEGAL GROUNDS** (Family Code sections 2200–2210, 2310–2312)
   a. ☐ Divorce or ☐ Legal separation of the marriage or domestic partnership based on *(check one):*
      (1) ☐ irreconcilable differences. (2) ☐ permanent legal incapacity to make decisions.
   b. ☐ Nullity of void marriage or domestic partnership based on
      (1) ☐ incest. (2) ☐ bigamy.
   c. ☐ Nullity of voidable marriage or domestic partnership based on
      (1) ☐ petitioner's age at time of registration of domestic partnership or marriage.
      (2) ☐ prior existing marriage or domestic partnership.
      (3) ☐ unsound mind.
      (4) ☐ fraud.
      (5) ☐ force.
      (6) ☐ physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	☐	☐	☐	☐
b. Physical custody of children to	☐	☐	☐	☐
c. Child visitation (parenting time) be granted to	☐	☐		☐

   As requested in ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C)
   ☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 6c(1)

7. **CHILD SUPPORT**
   a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
   b. An earnings assignment may be issued without further notice.
   c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
   d. ☐ Other *(specify):*

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**
   a. ☐ Spousal or domestic partner support payable to ☐ Petitioner ☐ Respondent
   b. ☐ Terminate (end) the court's ability to award support to ☐ Petitioner ☐ Respondent
   c. ☐ Reserve for future determination the issue of support payable to ☐ Petitioner ☐ Respondent
   d. ☐ Other *(specify)*:

9. **SEPARATE PROPERTY**
   a. ☐ There are no such assets or debts that I know of to be confirmed by the court.
   b. ☐ Confirm as separate property the assets and debts in ☐ *Property Declaration* (form FL-160). ☐ Attachment 9b.
      ☐ the following list. Item Confirm to

PETITIONER: RESPONDENT:	CASE NUMBER:

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**

a. ☐ There are no such assets or debts that I know of to be divided by the court.

b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed

☐ in *Property Declaration* (form FL-160) ☐ in Attachment 10b.

☐ as follows *(specify)*:

11. **OTHER REQUESTS**

a. ☐ Attorney's fees and costs payable by ☐ Petitioner ☐ Respondent

b ☐ Petitioner's former name be restored to *(specify):*

c. ☐ Other *(specify):*

☐ Continued on Attachment 11c.

12. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation* (**form FL-107-INFO**) and visit "Families Change" at **www.familieschange.ca.gov** — an online guide for parents and children going through divorce or separation.

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		**NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
RESPONSE ☐ **AND REQUEST FOR** ☐ **AMENDED**		CASE NUMBER:
☐ **Dissolution (Divorce) of:**	☐ Marriage ☐ Domestic Partnership	
☐ **Legal Separation of:**	☐ Marriage ☐ Domestic Partnership	
☐ **Nullity of:**	☐ Marriage ☐ Domestic Partnership	

1. **LEGAL RELATIONSHIP** *(check all that apply):*
   a. ☐ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.
2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*
3. **STATISTICAL FACTS**
   a. ☐ (1) Date of marriage *(specify):* (2) Date of separation *(specify):*
   (3) Time from date of marriage to date of separation *(specify):* Years Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent *(specify below):*
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months
4. **MINOR CHILDREN**
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of parentage or paternity. A copy ☐ is ☐ is not attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-120 [Rev. January 1, 2020]

RESPONSE—MARRIAGE/DOMESTIC PARTNERSHIP
(Family Law)

Family Code, § 2020
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Respondent requests that the court make the following orders:

5. **LEGAL GROUNDS** (Family Code sections 2200–2210; 2310–2312)
   a. ☐ **Respondent contends** that the parties never legally married or registered a domestic partnership.
   b. ☐ **Respondent denies** the grounds set forth in item 5 of the petition.
   c. ☐ **Respondent requests**
      (1) ☐ divorce ☐ Legal separation of the marriage or domestic partnership based on
         (a) ☐ irreconcilable differences. (b) ☐ permanent legal incapacity to make decisions.
      (2) ☐ Nullity of void marriage or domestic partnership based on
         (a) ☐ incest. (b) ☐ bigamy.
      (3) ☐ Nullity of voidable marriage or domestic partnership based on
         (a) ☐ respondent's age at time of registration of domestic partnership or marriage.
         (b) ☐ prior existing marriage or domestic partnership.
         (c) ☐ unsound mind.
         (d) ☐ fraud.
         (e) ☐ force.
         (f) ☐ physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	☐	☐	☐	☐
b. Physical custody of children to	☐	☐	☐	☐
c. Child visitation (parenting time) be granted to	☐	☐		☐

As requested in ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C)
☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 6c(1)

7. **CHILD SUPPORT**
   a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
   b. An earnings assignment may be issued without further notice.
   c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
   d. ☐ Other *(specify):*

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**
   a. ☐ Spousal or domestic partner support payable to ☐ Petitioner ☐ Respondent
   b. ☐ Terminate (end) the court's ability to award support to ☐ Petitioner ☐ Respondent
   c. ☐ Reserve for future determination the issue of support payable to ☐ Petitioner ☐ Respondent
   d. ☐ Other *(specify)*:

9. **SEPARATE PROPERTY**
   a. ☐ There are no such assets or debts that I know of to be confirmed by the court.
   b. ☐ Confirm as separate property the assets and debts in ☐ *Property Declaration* (form FL-160). ☐ Attachment 9b.
      ☐ the following list. Item Confirm to

PETITIONER: RESPONDENT:	CASE NUMBER:

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**

a. ☐ There are no such assets or debts that I know of to be divided by the court.

b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed

☐ in *Property Declaration* (form FL-160). ☐ in Attachment 10b.

☐ as follows *(specify)*:

11. **OTHER REQUESTS**

a. ☐ Attorney's fees and costs payable by ☐ Petitioner ☐ Respondent

b ☐ Respondent's former name be restored to *(specify):*

c. ☐ Other *(specify):*

☐ Continued on Attachment 11c.

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 RESPONDENT)

Date:

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

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation* (**form FL-107-INFO**) and visit "Families Change" at **www.familieschange.ca.gov** — an online guide for parents and children going through divorce or separation.

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

The original response must be filed in the court with proof of service of a copy on Petitioner.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	**DRAFT**
TELEPHONE NO.:	FAX NO.:	**NOT APPROVED BY THE JUDICIAL COUNCIL**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
OTHER PARTY/PARENT/CLAIMANT:		
DECLARATION FOR DEFAULT OR UNCONTESTED ☐ **DISSOLUTION** ☐ **LEGAL SEPARATION**		CASE NUMBER:

(NOTE: Items 1 through 12 apply to both dissolution and legal separation proceedings.)

1. I declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. I agree that my case will be proven by this declaration and that I will not appear before the court unless I am ordered by the court todo so.
3. All the information in the ☐ amended ☐ Petitioner ☐ Respondent is true and correct.
4. **Type of case** *(check a, b, or c):*
   a. ☐ **Default without agreement**
      (1) No response has been filed and there is no written agreement or stipulated judgment between the parties;
      (2) The default of the respondent was entered or is being requested, and I am not seeking any relief not requested in the petition; and
      (3) The following statement is true *(check one):*
         (A) ☐ There are no assets or debts to be disposed of by the court.
         (B) ☐ The community and quasi-community assets and debts are listed on the **completed** current *Property Declaration* (form FL-160), which includes an estimate of the value of the assets and debts that I propose to be distributed to each party. The division in the proposed *Judgment* (form FL-180) is a fair and equal division of the property and debts, or if there is a negative estate, the debts are assigned fairly and equitably.
   b. ☐ **Default without agreement**
      (1) No response has been filed and the parties have agreed that the matter may proceed as a default matter without notice; and
      (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnershiprights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.
   c. ☐ **Uncontested**
      (1) Both parties have appeared in the case; and
      (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnershiprights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.
5. **Declaration of disclosure***(check a, b, or c):*
   a. ☐ Both the petitioner and respondent have filed, or are filing concurrently, a *Declaration Regarding Service of Declaration of Disclosure* (form FL-141) and an *Income and Expense Declaration* (form FL-150).
   b. ☐ This matter is proceeding by default. I am the petitioner in this action and have filed a proof of service of the preliminary *Declaration of Disclosure* (form FL-140) with the court. I hereby waive receipt of the final *Declaration of Disclosure* (formFL-140) from the respondent.
   c. ☐ This matter is proceeding by default. I am the petitioner in this action and service of the summons on respondent was daone by publication or posting under court order. Service of the preliminary *Declaration of Disclosure* (form FL-140) is not required. I hereby waive receipt of the final *Declaration of Disclosure* (form FL-140) from the respondent.

Form Approved for Mandatory Use
Judicial Council of California
FL-170 [Rev. January 1, 2020]

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

d. ☐ This matter is proceeding as an uncontested action. Service of the final *Declaration of Disclosure* (form FL-140) is mutually waived by both parties. A waiver provision executed by both parties under penalty of perjury is contained on the *Stipulation and Waiver of Final Declaration of Disclosure* (form FL-144), in the settlement agreement or proposed judgment or another, separate stipulation.

6. ☐ **Child custody and visitation (parenting time)** should be ordered as set forth in the proposed *Judgment* (form FL-180).
   a. ☐ The information in *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (UCCJEA) (form FL-105)
      ☐ has ☐ has not changed since it was last filed with the court. *(If changed, attach updated form.)*
   b. ☐ There is an existing court order for custody/parenting time in another case in *(county)*:
      The case number is *(specify):*
   c. ☐ The current custody and visitation (parenting time) previously ordered in this case, or current schedule is *(specify)*:

      ☐ Contained on Attachment 6c.
   d. ☐ Facts in support of requested judgment (*In a default case, state your reasons below):*

      ☐ Contained on Attachment 6d.

7. ☐ **Child support** should be ordered as set forth in the proposed *Judgment* (form FL-180).
   a. If there are minor children, check and complete item (1) if applicable and item (2) or (3):
      (1) ☐ Child support is being enforced in another case in *(county):*
      The case number is *(specify):*
      (2) ☐ The information in the child support calculation attached to the proposed judgment is correct based on my personal knowledge.
      (3) ☐ I request that this order be based on the ☐ Petitioner's ☐ Respondent's earning ability. The facts in support of my estimate of earning ability are *(specify):*

      ☐ Contained on Attachment 7a(3).
   b. Complete items (1) and (2) regarding public assistance.
      (1) I ☐ am receiving ☐ am not receiving ☐ intend to apply for public assistance for the child or children listed in the proposed order.
      (2) To the best of my knowledge, the other party ☐ is ☐ is not receiving public assistance.
      ☐ Petitioner ☐ Respondent is presently receiving public assistance, and all support should be made payable to the local child support agency at the address set forth in the proposed judgment. A representative of the local child support agency has signed the proposed judgment.

8. **Spousal, Partner, and Family Support***(If a support order or attorney fees are requested, submit a completed* Income and Expense Declaration *(form FL-150) unless a current form is on file. Include your best estimate of the other party's income. Check at least one of the following.)*
   a. ☐ I knowingly give up forever any right to receive spousal or partner support.
   b. ☐ I ask the court to reserve jurisdiction to award spousal or partner support in the future to:
      ☐ Petitioner ☐ Respondent
   c. ☐ I ask the court to terminate forever spousal or partner support for: ☐ Petitioner ☐ Respondent
   d. ☐ Spousal support or domestic partner support should be ordered as set forth in the proposed *Judgment* (form FL-180) based on the factors described in:
      ☐ *Spousal or Partner Support Declaration Attachment* (form FL-157)
      ☐ written agreement
      ☐ attached declaration *(Attachment 8d.)*
   e. ☐ Family support should be ordered as set forth in the proposed *Judgment* (form FL-180).
   f. ☐ Other *(specify):*

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

9. ☐ **Parentage** of the children of the petitioner and respondent born prior to their marriage or domestic partnership should be ordered as set forth in the proposed *Judgment* (form FL-180).
   a. ☐ A voluntary declaration of parentage or paternity is attached.
   b. ☐ Parentage was previously established by the court in *(county):*
      The case number is *(specify):*
      ☐ Written agreement of the parties attached here or to the *Judgment* (form FL-180).

10. ☐ **Attorney fees** should be ordered as set forth in the proposed *Judgment* (form FL-180)
    ☐ facts in support in form FL-319
    ☐ Other *(specify facts below):*

11. ☐ The judgment should be entered nunc pro tunc for the following reasons *(specify)*:

12. ☐ Petitioner ☐ Respondent requests restoration of former name as set forth in the proposed *Judgment* (form FL-180) *(Proceedings for dissolution of marriage or nullity of marriage only).*

13. There are irreconcilable differences that have led to the irremediable breakdown of the marriage or domestic partnership, and there is no possibility of saving the marriage or domestic partnership through counseling or other means.

14. This declaration may be reviewed by a commissioner sitting as a temporary judge, who may determine whether to grant this request or require my appearance under Family Code section 2336.

STATEMENTS IN THIS BOX APPLY ONLY TO DISSOLUTIONS

15. If this is a dissolution of marriage or of a domestic partnership created in another state, the petitioner and/or the respondent have been residents of this county for at least three months and of the state of California for at least six months continuously and immediately preceding the date of the filing of the petition for dissolution of marriage or domestic partnership.

16. I ask that the court grant the request for a judgment for dissolution of marriage or domestic partnership based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.

17. ☐ **Status only judgment:** This declaration is only for the termination of marital or domestic partner status. I ask the court to reserve jurisdiction over all other issues not requested in this declaration for later determination.

THIS STATEMENT APPLIES ONLY TO LEGAL SEPARATIONS

18. I ask that the court grant the request for a judgment for legal separation based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.

I understand that a judgment of legal separation does not terminate a marriage or domestic partnership and that I am still married or a partner in a domestic partnership.

19. ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER: 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:	
PETITIONER: RESPONDENT:	
PETITION TO DETERMINE PARENTAL RELATIONSHIP ☐ **Child Support** ☐ **Child Custody** ☐ **Visitation** ☐ **Other *(specify):***	CASE NUMBER:

1. Petitioner is
   a. ☐ gave birth to th children listed in item 2.
   b. ☐ wants to be determined as a parent of the child in item 2 because *(specify):*
   c. ☐ the child or the child's personal representative *(specify court and date of appointment):*
   d. ☐ Other *(specify):*

2. The children are
   a. Child's name Birthdate Age

   b. ☐ a child who is not yet born.

3. The court has jurisdiction over the respondent because the respondent
   a. ☐ resides in this state.
   b. ☐ had sexual intercourse in this state, which resulted in conception of the children listed in item 2.
   c. ☐ Other *(specify):*

4. The action is brought in this county because *(you must check one or more to file in this county):*
   a. ☐ the child resides or is found in the county.
   b. ☐ a parent is deceased and proceedings for administration of the estate have been or could be started in this county.

5. Petitioner claims *(check all that apply):*
   a. ☐ respondent is the child's mother.
   b. ☐ respondent is the child's father.
   c. ☐ parentage has been determined by Voluntary Declaration of Parentage or Paternity *(attach copy)*.
   d. ☐ respondent who is child's parent has failed to support the child.
   e. ☐ *(name):* has furnished or is furnishing the following reasonable expenses of pregnancy and birth for which the respondent as parent of the child is obligated:
      Amount Payable to For *(specify):*

   f. ☐ public assistance is being provided to the child.
   g. ☐ Other *(specify):*

6. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA))* (form FL-105) is attached.

Form Approved for Optional Use
Judicial Council of California
FL-200 [Rev. January 1, 2020]

Family Code, § 7630
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Petitioner requests the court to make the determinations indicated below.

7. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent ☐ Other *(specify):* is the parent of the children listed in item 1.
   b. ☐ Petitioner ☐ Respondent ☐ Other *(specify):* is not the parent of the children listed in item 1.
   c. ☐ Petitioner requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent ☐ Other *(person in 7a.)* is the parent of the children listed in item 1.

8. CHILD CUSTODY AND VISITATION (PARENTING TIME)
   a. If ☐ Petitioner ☐ Respondent ☐ Other is found to be the parent of the children listed in item 1.

	Petitioner	Respondent	Joint	Other
b. Legal custody of children to	☐	☐	☐	☐
c. Physical custody of children to	☐	☐	☐	☐

   d. Visitation (parenting time) of children:
      (1) ☐ None
      (2) ☐ Reasonable visitation (parenting time).
      (3) ☐ Petitioner ☐ Respondent ☐ Other should have the right to visit the children as follows:
      (4) ☐ Visitation with the following restrictions *(specify):*
   e. Facts in support of the requested custody and visitation (parenting time) orders are *(specify):*
      ☐ Contained in the attached declaration.
   f. ☐ I request mediation or child custody recommending counseling to work out a parenting plan.

9. REASONABLE EXPENSES OF PREGNANCY AND BIRTH:

	Petitioner	Respondent	Joint	Other
Reasonable expenses of pregnancy and birth be paid by as follows:	☐	☐	☐	☐

10. FEES AND COSTS OF LITIGATION

	Petitioner	Respondent	Joint	Other
a. Attorney fees to be paid by	☐	☐	☐	☐
b. Expert fees, guardian ad litem fees, and other costs of the action or pretrial proceedings to be paid by	☐	☐	☐	☐

11. NAME CHANGE
    ☐ Children's names be changed, according to Family Code section 7638, as follows *(specify):*

12. CHILD SUPPORT
    The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

13. I have read the restraining order on the back of the *Summons* (FL-210) and I understand it applies to me when this Petition is filed.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

A blank *Response to Petition to Determine Parental Relationship* (form FL-220) must be served on the respondent with this petition.

NOTICE: If you have a child from this relationship, the court is required to order child support based upon the income of both parents. Support normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based upon information supplied by the other parent.Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: STATE BAR NUMBER:	FOR COURT USE ONLY
FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
RESPONSE TO PETITION TO DETERMINE PARENTAL RELATIONSHIP **(Uniform Parentage)**	CASE NUMBER:

1. The children are
   a. Child's name — Birthdate — Age

   b. ☐ a child who is not yet born.
2. The petitioner
   a. ☐ gave birth to th children listed above.
   b. ☐ wants to be determined as a parent of the child in item 1 because *(specify):*
   c. ☐ not certain whether he or she is the biological parent of the children listed above.
   d. ☐ the child or the child's personal representative *(specify court and date of appointment):*
   e. ☐ Other *(specify):*
3. The respondent
   a. ☐ lives in the State of California.
   b. ☐ was in California when the children listed in item 1 were conceived.
   c. ☐ does not live in the State of California.
   d. ☐ was not in California when the children listed in item 1 were conceived.
   e. ☐ Other *(specify):*
4. The children
   a. ☐ live or are in this county.
   b. ☐ are children of a parent who is deceased, and proceedings for administration of the estate have been or could be startedin this county.
5. The respondent is
   a. ☐ the father of the children listed in item 1 above.
   b. ☐ the mother of the children listed in item 1 above.
   c. ☐ not certain if he or she is the parent of the children listed in item 1 above.
   d. ☐ not the parent of the children listed in item 1 above.
   e. ☐ Other *(specify):*
6. Additional statements
   a. ☐ Parentage has been established by a voluntary declaration of parentage or paternity *(attach copy).*
   b. ☐ Parentage has been established in another case ☐ governmental child support ☐ Other *(specify):*
   c. ☐ Public assistance is being provided to the children.
7. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA))* (form FL-105) is attached.

PETITIONER: RESPONDENT:	CASE NUMBER:

The respondent requests that the court make the orders listed below.

8. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Respondent ☐ Petitioner ☐ Other *(specify):* is the parent of the children listed in item 1.
   b. ☐ Respondent ☐ Petitioner ☐ Other *(specify):* is not the parent of the children listed in item 1.
   c. ☐ Respondent requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent ☐ Other *(person in 8a.)* is the parent of the children listed in item 1.

9. CHILD CUSTODY AND VISITATION (PARENTING TIME)
   a. If ☐ Petitioner ☐ Respondent ☐ Other is found to be the parent of the children listed in item 1.

	Petitioner	Respondent	Joint	Other
b. Legal custody of children to	☐	☐	☐	☐
c. Physical custody of children to	☐	☐	☐	☐

   d. Visitation (parenting time) of children:
      (1) ☐ None
      (2) ☐ Reasonable visitation (parenting time).
      (3) ☐ Petitioner ☐ Respondent ☐ Other should have the right to visit the children as follows:
      (4) ☐ Visitation with the following restrictions *(specify):*
      (5) ☐ I request mediation or child custody recommending counseling to work out a parenting plan.

10. REASONABLE EXPENSES OF PREGNANCY AND BIRTH:

	Petitioner	Respondent	Joint	Other
Reasonable expenses of pregnancy and birth be paid by as follows:	☐	☐	☐	☐

11. FEES AND COSTS OF LITIGATION

	Petitioner	Respondent	Joint	Other
a. Attorney fees to be paid by				
b. Expert fees, guardian ad litem fees, and other costs of the action or pretrial proceedings to be paid by	☐ ☐	☐ ☐	☐ ☐	☐ ☐

12. NAME CHANGE
   ☐ Children's names be changed, according to Family Code section 7638, as follows *(specify old and new names):*

13. OTHER ORDERS REQUESTED *(SPECIFY):*

14. CHILD SUPPORT.
   The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

I have read the restraining order on the back of the *Summons* (FL-210) and I understand it applies to me when this Petition is filed.

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

NOTICE: If you have a child from this relationship, the court is required to order child support based upon the income of both parents. Support normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based upon information supplied by the other parent.Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		DRAFT
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	NOT APPROVED BY THE JUDICIAL COUNCIL
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
DECLARATION FOR DEFAULT OR UNCONTESTED JUDGMENT		CASE NUMBER:

1. I declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. I request that proof will be by this declaration and that I will not appear before the court unless I am ordered by the court to appear.
3. All the information in the ☐ *Petition or Complaint to Establish Parental Relationship* ☐ *Response* or *Answer* ☐ *Petition to Establish Custody and Support* ☐ *Response* is true and correct.
4. ☐ Respondent and/or ☐ Petitioner is/are the parent(s) of the minor child(ren).
5. A declaration of parentage or paternity form ☐ has ☐ has not been signed regarding this child *(attach a copy if available).*
6. DEFAULT OR UNCONTESTED *(Check a or b)*
   a. ☐ The default of the respondent was entered or is being requested, and I am not seeking any relief not requested in the petition. **OR**
   b. ☐ The parties have stipulated (agreed in writing) that the matter may proceed as an uncontested matter without notice, and the stipulation is attached.
7. ☐ CHILD SUPPORT should be ordered as set forth in the proposed *Judgment* (form FL-250).
   a. ☐ Petitioner ☐ Responent is presently receiving public assistance (TANF); thus all support should be made payable to the local child support agency at (*specify address):*

   b. **NOTE: If a support order is requested, submit a completed *Income and Expense Declaration* (form FL-150), or *Financial Statement (Simplified)* (form FL-155), unless a current form is on file. Include your best estimate of the other party's gross monthly income.**
8. ☐ ATTORNEY FEES should be ordered as set forth in the proposed *Judgment* (form FL-250).
9. ☐ CHILD CUSTODY should be ordered as set forth in the proposed *Judgment* (form FL-250).
10. ☐ CHILD VISITATION (PARENTING TIME) should be ordered as set forth in the proposed *Judgment* (form FL-250).
11. ☐ REASONABLE EXPENSES OF PREGNANCY AND BIRTH should be ordered as set forth in the proposed *Judgment* (form FL-250).
12. ☐ NAMES OF THE CHILDREN should be changed as set forth in the proposed *Judgment* (form FL-250).
13. This declaration may be reviewed by a commissioner sitting as a temporary judge who may determine whether to grant this request or require my appearance.
14. I have read and understand the *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235), which is signed and attached to this declaration.
15. ☐ Other *(specify):*

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

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

Form Adopted for Mandatory Use
Judicial Council of California
FL-230 [Rev. January 1, 2020]

DECLARATION FOR DEFAULT OR UNCONTESTED JUDGMENT
(Uniform Parentage, Custody and Support)

Family Code, §§ 7600, 3120, 3900 et seq
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

ADVISEMENT AND WAIVER OF RIGHTS RE: DETERMINATION OF PARENTAL RELATIONSHIP

1. **RIGHT TO BE REPRESENTED BY A LAWYER.** I understand that I have the right to be represented by a lawyer of my own choice at my own expense. If I cannot afford a lawyer, I can contact the Lawyer Referral Association of the local bar association or the Family Law Facilitator for assistance.
2. **RIGHT TO A TRIAL.** I understand that I have a right to have a judge determine whether I am the parent of the children named in this action.
3. **RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES.** I understand that in a trial I have the right to confront and cross-examine the witnesses against me and to present evidence and witnesses in my own defense.
4. **RIGHT TO HAVE GENETIC TESTING.** I understand that, where the law permits, I have the right to have the court order genetic testing. The court will decide who pays for the tests. The court could order that I pay none, some, or all of the costs of the tests.
5. **OBLIGATIONS.** I understand that if I admit that I am the parent of the children in this action that those children will be my children for legal purposes.
6. **WAIVER.** I understand that I am admitting that I am the parent of the children named in the stipulation and am giving up the rights stated above (except the right to an attorney if I have an attorney).
7. **CHILD SUPPORT.** I understand that I will have the duty to contribute to the support of the children named in this action and that this duty of support will continue for each child until the obligation is terminated by law.
8. **CRIMINAL NON-SUPPORT.** I understand that if I willfully fail to support the children, criminal proceedings may be initiated against me.
9. **UNDERSTANDING.**
   a. ☐ I have read and understand the *Judgment (Uniform Parentage—Custody and Support)* (form FL-250) and this *Advisement and Waiver of Rights.*
   b. ☐ I understand the translation.

IF I AM REPRESENTED BY AN ATTORNEY, I ACKNOWLEDGE THAT MY ATTORNEY HAS READ AND EXPLAINED TO ME THE CONTENTS OF THE STIPULATION, RECITALS, AND WAIVERS, AND I ACKNOWLEDGE THAT I UNDERSTAND THEM.

Date:

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

INTERPRETER'S DECLARATION

1. The ☐ Petitioner ☐ Respondent is unable to read or understand the Judgment *(Uniform Parentage—Custody and Support)* (form FL-250) and this Advisement and Waiver of Rights because:
   a. ☐ the primary language of the party is *(specify):*
   b. ☐ Other *(specify):*
2. I certify under penalty of perjury under the laws of the State of California that I have, to the best of my ability, read or translated for the ☐ Petitioner ☐ Respondent the Judgment *(Uniform Parentage—Custody and Support)* (form FL-250) and this Advisement and Waiver of Rights. ☐ Petitioner ☐ Respondent understood the Judgment *(Uniform Parentage—Custody and Support)* (form FL-250) and this *Advisement and Waiver of Rights* before signing them, as stated in Item 9 above.

Date:

(TYPE OR PRINT NAME) _____ (SIGNATURE OF INTERPRETER) _____

Form Approved for Optional Use
Judicial Council of California
FL-235 [Rev. January 1, 2020]

ADVISEMENT AND WAIVER OF RIGHTS RE DETERMINATION OF PARENTAL RELATIONSHIP
(Uniform Parentage)

Family Code, § 7600 et seq.
www.courts.ca.gov.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
JUDGMENT		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders.
   The restraining orders are contained in item(s): of the attachment.
   They expire on *(date):* A CLETS form must be attached.
2. a. This matter proceeded as follows: ☐ Default or uncontested ☐ By declaration ☐ Contested
   b. Date: Dept.: Room:
   c. Judicial officer *(name):* ☐ Temporary judge
   d. ☐ Petitioner present ☐ Attorney present *(name):*
   e. ☐ Respondent present ☐ Attorney present *(name):*
   f. **Petitioner** (1) ☐ The petitioner appeared without counsel and was advised of relevant rights.
   (2) ☐ The petitioner signed *Advisement and Waiver of Rights Re: Determination of Parental Relationship* (form FL-235).
   (3) ☐ The petitioner is married to the respondent, and no other action is pending.
   (4) ☐ The petitioner signed a declaration of parentage or paternity.
   (5) ☐ There is a prior judgment of parentage in a family support, juvenile, or adoption court case.
   g. **Respondent** (1) ☐ The respondent appeared without counsel and was advised of relevant rights.
   (2) ☐ The respondent signed *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235).
   (3) ☐ The respondent is married to the petitioner, and no other action is pending.
   (4) ☐ The respondent signed a declaration of paternity or parentage.
   (5) ☐ There is a prior judgment of parentage in a family support, juvenile or adoption court case.
   h. Other parties or attorneys present *(specify):*

3. **THE COURT FINDS**
   Name:
   Name:
   are the parents of the following children:

Child's name	Date of birth

4. **THE COURT ORDERS**
   a. ☐ Child custody and visitation are as specified in one or more of the attached forms:
   (1) ☐ The petitioner appeared without counsel and was advised of relevant rights.
   (2) ☐ *Stipulation for Order for Child Custody and/or Visitation of Children* (form FL-355)
   (3) ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-250 [Rev. January 1, 2020]

JUDGMENT
(Uniform Parentage—Custody and Support)

Family Code, §§ 3120, 3900, 7600 et seq.
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

5. **THE COURT FURTHER ORDERS**
   a. ☐ Child support is as stated in one or more of the attached:
      (1) ☐ *Child Support Information and Order Attachment* (form FL-342)
      (2) ☐ *Stipulation to Establish or Modify Child Support and Order* (form FL-350)
      (3) ☐ Other *(specify):*
   b. Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. Thereafter, the parents must notify the court of any change in the information submitted, within 10 days of the change.
   c. The form *Notice of Rights and Responsibilities—Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.
   d. ☐ The last names of the children are changed to *(specify):*
   e. ☐ The birth certificates must be amended to conform to this court order by
      (1) ☐ adding the following parent's name:
      (2) ☐ changing the last name of the children.
   f. ☐ Attorney fees and costs are as stated in the attachment.
   g. ☐ Reasonable expenses of pregnancy and birth are as stated in the attachment.
   h. ☐ Other *(specify):*

☐ Continued on Attachment 5h.

6. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME)

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		DRAFT
FIRM NAME:		NOT APPROVED BY THE JUDICIAL COUNCIL
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	3/22/2019
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
PETITION FOR CUSTODY AND SUPPORT OF MINOR CHILDREN		CASE NUMBER:

NOTICE: This action will not terminate a marriage or determine a parental relationship.

1. I am the petitioner. The respondent and I are the parents of the following minor children:

Child's name	Date of birth

☐ continued on Attachment 1

2. Choose at least one box below to show the reason that you are using this form:
   a. ☐ I am married to the respondent, and no action is pending in any court for dissolution, legal separation or nullity.
   b. ☐ Respondent and I have signed a declaration of parentage or paternity regarding the minor children, and no action regarding the children has been filed in any other court.
   c. ☐ Respondent and I have legally adopted a child together.
   d. ☐ Respondent and I have been determined to be the parents in juvenile or governmental child support case number:
      County: State: Country (if not the United States):

3. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

4. **Child custody and visitation (parenting time).** I request the following orders:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	☐	☐	☐	☐
b. Physical custody of children to	☐	☐	☐	☐
c. Visitation (parenting time) of children with:	☐	☐		☐

The proposed schedule for visitation (parenting time) is as follows:

☐ See the attached form FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment.*

Form Adopted for Mandatory Use
Judicial Council of California
FL-260 [Rev. January 1, 2020]

Family Code, §§ 211, 3120, 3400, 3900, 7600 et seq.
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

4. d. ☐ I request that the child abduction prevention orders requested on form FL-312 be approved.
   e. ☐ I request that the proposed holiday schedule set out in ☐ form FL-341(C) ☐ other be approved.
   f. ☐ I request that additional orders regarding child custody set out in ☐ form FL-341(D) ☐ other be approved.
   g. ☐ I request that joint legal custody orders set out in ☐ form FL-341(E) ☐ other be approved.
   h. ☐ I request that visitation (parenting time) be supervised for the following persons, with the following restrictions:

   ☐ Continued on Attachment 4h.
   i. ☐ Other *(specify):*

5. **Fees and cost of litigation**
   a. Attorney fees will be paid by ☐ petitioner ☐ respondent.
   b. ☐ Each party will pay own fees.

6. **Child support.** The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

7. Other *(specify):*

8. **I have read the restraining order on the back of the *Summons (Uniform Parentage—Petition for Custody and Support)* (form FL-210) that is being filed with this petition, and I understand that it applies to me when this petition is filed.**

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

A blank *Response to Petition for Custody and Support of Minor Children* (form FL-270) must be served on the respondent with this Petition.

NOTICE: If you have a child from this relationship, the court is required to order child support based on the incomes of both parents. You should supply the court with information about your income. Otherwise, the child support order will be based on information supplied by the other parent. Any party required to pay child support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		***DRAFT*** ***NOT APPROVED BY THE JUDICIAL COUNCIL*** ***2/22/2019***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT:		
RESPONSE TO PETITION FOR CUSTODY AND SUPPORT OF MINOR CHILDREN		CASE NUMBER:

NOTICE: This action will not terminate a marriage or determine a parental relationship.

1. I am the respondent. The petitioner and I are the parents of the following minor children:

Child's name	Date of birth

☐ continued on Attachment 1

2. Choose at least one box below to show the reason that you are using this form:
   a. ☐ I am married to the petitioner, and no action is pending in any court for dissolution, legal separation, or nullity.
   b. ☐ Petitioner and I have signed a declaration of parentage or paternity regarding the minor children, and no action regarding the children has been filed in any other court.
   c. ☐ Petitioner and I have legally adopted a child together.
   d. ☐ Petitioner and I have been determined to be the parents in juvenile or governmental child support case number:
      County: State: Country (if not the United States):

3. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

4. **Child custody and visitation (parenting time).** I request the following orders:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	☐	☐	☐	☐
b. Physical custody of children to	☐	☐	☐	☐
c. Visitation (parenting time) of children with	☐	☐		☐

The proposed schedule for visitation (parenting time) is as follows:

☐ See the attached form FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment.*

Form Adopted for Mandatory Use
Judicial Council of California
FL-270 [Rev. January 1, 2020]

Family Code, §§ 211, 3120, 3400, 3900, 7600 et seq.
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

4. d. ☐ I request that the child abduction prevention orders requested on form FL-312 be approved.
   e. ☐ I request that the proposed holiday schedule set out in ☐ form FL-341(C) ☐ other be approved.
   f. ☐ I request that additional orders regarding child custody set out in ☐ form FL-341(D) ☐ other be approved.
   g. ☐ I request that joint legal custody orders set out in ☐ form FL-341(E) ☐ other be approved.
   h. ☐ I request that visitation (parenting time) be supervised with the following persons, with the following restrictions:

   ☐ Continued on Attachment 4h.
   i. ☐ Other *(specify):*

5. **Fees and cost of litigation**
   a. Attorney fees will be paid by ☐ petitioner ☐ respondent.
   b. ☐ Each party will pay own fees.

6. **Child support.** The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

7. Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

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

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT: OTHER PARTY:		
NOTICE OF MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE		CASE NUMBER:

INSTRUCTIONS

- Use this form if you want to cancel (set aside) a judgment of parentage. A judgment of parentage (also known as paternity) is the final decision of a court naming the legal parents of a child.
- Complete items 5–12. You must also complete a *Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-273) for each child in this request. For more information about completing these forms, see *Information Sheet for Completing Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-274).
- After you complete the forms, take the originals plus three copies to the court clerk to file.
- After you file, copies of the form must be "served" on the other parties in the case. See *Information Sheet for Service of Process* (form FL-611) for information about completing a proof of service.
- Make sure you go to the court hearing listed in item 1.

NOTICE OF HEARING

(FOR COURT USE ONLY)

1. **TO ALL PARTIES. A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room.:

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

2. **WARNING to the person served with this request:** The court may make the requested orders without you if you do not file a *Response to Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (**form FL-276**) and appear at the hearing. *(See page 2 of FL-276 for more information and instructions for "serving" your response.)*

It is ordered that:

3. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*
4. ☐ Any responsive declaration must be served on or before *(date):*

Date:

JUDICIAL OFFICER

REQUEST TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE

5. Person making this request
   a. My name is:
   b. I am the:
      (1) ☐ Petitioner
      (2) ☐ Respondent
      (3) ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-272 [Rev. January 1, 2020]

Family Code, §§ 7646, 7576, 7577
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

6. Information about the judgment of parentage *(attach a copy if you have one)*:
   a. Date entered:
   b. County *(specify):*
   c. Information about all of the children listed in the judgment:

	Name of child	Date of birth	Voluntary declaration of parentage or paternity signed
(1)			☐ Yes ☐ No ☐ Unknown
(2)			☐ Yes ☐ No ☐ Unknown
(3)			☐ Yes ☐ No ☐ Unknown
(4)			☐ Yes ☐ No ☐ Unknown

   (5) ☐ Additional children are listed on an attached page.

7. ☐ Other cases involving the children *(check all that apply):*
   a. ☐ Divorce, legal separation, or nullity *(case number, if known):*
   b. ☐ Parentage, custody, or child support *(case number, if known):*
   c. ☐ Other *(case number, if known):*
   d. ☐ The local child support agency is providing services for the children in *(specify county):*

8. I request the court cancel (set aside) the judgment of parentage, the voluntary declaration of parentage or paternity, and any child support owed, order genetic testing, and enter a judgment of nonparentage for:
   a. ☐ all of the children listed in item 6c.
   b. ☐ the following children only *(specify):*

9. A *Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-273) is attached for each child in item 8.

10. The marital presumption contained in Family Code section 7540 does not apply. *(The marital presumption means if the parents are married and living as spouses at the time of conception and birth, a child is legally considered to be a child of the marriage.)*

11. ☐ I request that the court appoint a guardian ad litem for each child subject to this motion. *(A guardian ad litem is an adult appointed by the court who represents the interests of a child.)*

12. ☐ Other requests *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY MAKING REQUEST)

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.)

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

DECLARATION IN SUPPORT OF MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE

(Attach a copy of this declaration for each child for whom relief is requested.)

1. The orders requested are for the following child. The legal name, home address, date of birth, and county of residence are *(specify if known, write "unknown" if unknown):*
   a. Child's name:
   b. Address:
   c. County of residence:
   d. Date of birth:

2. The name, mailing address, and county of residence, or, if deceased, the date and place of death, of the following persons are *(if unknown, write "unknown"):*

   a. **Previously Established Father**
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   b. **Previously Established Mother**
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   c. **Genetic Father** ☐ Same as above
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   d. **Genetic Mother** ☐ Same as above
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   e. **Guardian of the child**
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   f. **Person with physical custody of the child**
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   g. **Guardian ad litem of the child**
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

   h. **Other *(specify):***
   Name:
   Address:
   County of residence:
   ☐ Deceased Date of death:
   Place of death:

3. In support of this request, I declare:
   a. I believe the previously established father is not the genetic father of the child. The specific reasons for this belief are *(specify):*

☐ included in the attached page(s).

Form Adopted for Mandatory Use
Judicial Council of California
FL-273 [Rev. January 1, 2020]

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

3. b. There ☐ is ☐ is not another judgment of parentage in a different case for the same previously established father and child. The other court case is *(specify case number, state, and county of court):*

A copy of the other judgment ☐ is ☐ is not attached. *(If not attached, explain why.)*

c. Other *(specify):*

COMPLETE THIS SECTION ONLY IF THERE IS A VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY

4. ☐ The previously established father has signed a voluntary declaration of parentage or paternity for the child involved.
   a. A copy of the voluntary declaration ☐ is ☐ is not attached. *(If not attached, explain why not.)*

   b. ☐ A court order was entered based on the voluntary declaration of parentage or paternity on *(date):* , in case number *(specify):*

   c. I ask that the court cancel (set aside) the voluntary declaration of parentage or paternity because of *(check all that apply):*

   (1) ☐ Fraud (I was kept in ignorance of the true facts by another person)
   (2) ☐ Duress (I was threatened or mentally coerced)
   (3) ☐ Material mistake of fact (I thought the facts were different from what they really are)
   (4) ☐ The voluntary declaration is void (invalid) because *(specify):*

   The following reasons apply only to voluntary declarations signed before January 1, 2020 ***or*** *if you did not sign the declaration.*

   (5) ☐ Perjury (someone lied when the voluntary declaration was signed)
   (6) ☐ My mistake, inadvertence, surprise, or excusable neglect
   (7) ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PERSON REQUESTING THESE ORDERS)

INFORMATION SHEET FOR COMPLETING NOTICE OF MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE (FORMS FL-272 AND FL-273)

NOTICE
YOU MUST CONTINUE PAYING SUPPORT WHILE THIS ACTION IS PENDING.

Use the *Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-272) and the *Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-273) to cancel (set aside) an existing parentage judgment. If you are requesting to cancel (set aside) a parentage judgment for more than one child, complete a declaration (form FL-273) for each child. If there is a corresponding voluntary declaration of parentage or paternity, this motion may also be used to cancel (set aside) the voluntary declaration of parentage or paternity. The voluntary declaration of parentage or paternity and/or judgment of parentage may be canceled (set aside) only if the previously established father is determined by genetic testing not to be the genetic father of the child. (Even if the motion can be filed as described below, there may be other grounds to set aside the parentage judgment or other related relief may be available. You may wish to consult with an attorney or the family law facilitator in your county before completing and filing the motion.) In addition to this motion, you may file a separate motion to modify child support and set arrears. For information on changing the support order, see the *Information Sheet on Changing a Child Support Order* on page 2 of form FL-192.

The following persons may bring this motion:

A previously established mother;
A previously established father;
A child;
A legal representative of any of the above persons; or
A local child support agency (LCSA).

This motion must be filed within the following time frames:

(1) Within a two-year period commencing with the date:

(a) on which the previously established father knew or should have known of a judgment that established him as the father of the child (for example, the date a wage garnishment was served), or

(b) on which the previously established father knew or should have known of the existence of an action to adjudicate the issue of parentage (for example, the date of service of a summons),

whichever is first, except as provided in paragraphs (2)–(4) below, if parentage was established by a voluntary declaration of parentage or paternity.

(2) If you did not sign the declaration: within a two-year period commencing with the date of the child's birth, within one year of the date you either found out or should have found out that the declaration was signed because of fraud or perjury, **or** within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

(3) If the declaration was signed before January 1, 2020 **and** you signed the voluntary declaration: within a two-year period commencing with the date of the child's birth, within one year of the date you either found out or should have found out that the declaration was signed because of fraud or perjury, **or** within six months of the entry of a court order or judgment for child custody, visitation or support based on the declaration.

(4) If the declaration was signed after January 1, 2020 **and** you signed the voluntary declaration: within a two-year period commencing with the effective date of the voluntary declaration. (If both parents were 18 years or older when they signed the declaration, this is the date that the declaration was filed with the Department of Child Support Services.)

*(Note: If you are one of the people who signed the voluntary declaration **and** it was signed on or after January 1, 2020, it can only be canceled (set aside) because of fraud, duress, or material mistake of fact.)*

This motion *may not* be filed if any of the following conditions apply:

The parentage judgment resulted from a divorce, legal separation, or nullity.

The marital presumption contained in Family Code section 7540 applies. (The marital presumption means if the parents are married and living as spouses at the time of conception and birth, a child is legally considered to be a child of the marriage.)

There is a voluntary declaration of parentage or paternity and there is no basis to cancel (set aside) the voluntary declaration.

Form Adopted for Optional Use
Judicial Council of California
FL-274 [Rev. January 1, 2020]

Family Code, §§ 7646, 7576, 75775
www.courts.ca.gov

There is another California judgment of parentage in a different case for the same previously established father and child, unless both parentage judgments qualify for this motion and you filed a motion in each case.

The parentage judgment was not issued in California.

The parentage judgment is based on genetic tests that were conducted before the judgment and that indicated the previously established father is the biological father of the child.

The judgment is based on an adoption.

The child was conceived by artificial insemination and the judgment is based on Family Code section 7613.

The child was conceived under a surrogacy agreement.

The completed motion and a blank *Response to Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-276) must be served on the following, if applicable:

A previously established mother;
A previously established father;
The child's guardian ad litem, if any; and
The local child support agency (LCSA) if it is providing services.

GENETIC TESTING

In most cases, genetic testing will be required. If the LCSA is providing services, the LCSA will pay for and coordinate the genetic testing.

If you receive an administrative order for genetic testing from the LCSA, you may file a motion with the court seeking relief from the LCSA genetic testing order. However, the court may order participation in genetic testing.

If any person refuses to submit to genetic testing after receipt of the LCSA order for genetic testing, or fails to seek relief from the court before the scheduled test date or within 10 days after the scheduled test date, the court may resolve the question of parentage against that person or enforce the LCSA order if the rights of others or the interest of justice so require.

The moving party is not required to present evidence of genetic testing indicating that the previously established father is not the genetic father of the child in order to bring this motion.

ADDITIONAL INFORMATION

An adult child may be included when completing forms FL-272 and FL-273.

A guardian ad litem may be appointed by the court to represent the best interest of the child.

If the previously established father is found not to be the biological father of the child, the court may still deny this motion if it determines it is in the best interest of the child to do so.

If the court grants this motion to set aside the parentage judgment, the previously established father has no right of reimbursement of any support paid before the granting of the motion.

To obtain information about or a copy of a voluntary declaration of parentage or paternity in your case, contact:

California Department of Child Support Services–POP Unit, at:
P.O. Box 419064
Rancho Cordova, CA 95741-9064
Telephone (toll-free): 866-249-0773

Your local child support agency (LCSA)

A family law facilitator

If you need additional assistance with these forms, contact an attorney or the family law facilitator in your county.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT: OTHER PARTY:		
RESPONSE TO NOTICE OF MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE		
HEARING DATE: TIME: DEPARTMENT OR ROOM:		CASE NUMBER:

INSTRUCTIONS

- Complete this form if you do not agree with the requests made in the *Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-272) filed in this case.
- After you complete the form, take the original plus three copies to the court clerk to file.
- After you file, copies of the form must be "served" on the other parties in the case. See *Information Sheet for Service of Process* (form FL-611) for information about completing a proof of service.
- Make sure you go to the court hearing listed in item 1 of form FL-272.

1. Information about the judgment of parentage listed in the motion:
   a. ☐ I agree with the information listed about the judgment of parentage.
   b. ☐ I do not agree with the information listed about the judgment of parentage because *(specify why you do not agree):*

2. Request for genetic testing to establish parentage:
   a. ☐ I agree to submit to genetic testing.
   b. ☐ I do not agree to submit to genetic testing.

3. Request to appoint a guardian ad litem for each child listed at issue *(a guardian ad litem is an adult appointed by the court who represents the interests of a child)*:
   a. ☐ I agree to the appointment of a guardian ad litem.
   b. ☐ I do not agree to the appointment of a guardian ad litem.

4. ☐ The request is not complete because *(specify):*

5. ☐ The request is not timely because *(specify):*

6. ☐ The request is not proper because *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-276 [Rev. January 1, 2020]

Family Code, §§ 7646, 7576, 7577
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

7. The facts in support of this request are *(check all that apply):*
   a. ☐ The parentage judgment resulted from a divorce, legal separation, or nullity.
   b. ☐ The parents of the child were married and living as spouses at the time of conception and birth and no exceptions to the marriage presumption contained in Family Code section 7540 apply.
   c. ☐ The parentage judgment was not issued in California.
   d. ☐ There is another California judgment of parentage in a different case for the same previously established father and child.
   e. ☐ There is a voluntary declaration of parentage or paternity, and there is no basis to set it aside.
   f. ☐ Genetic testing was conducted before the judgment that indicated the previously established father is the biological father of the child.
   g. ☐ The parentage judgment is based on an adoption.
   h. ☐ The child was conceived by artificial insemination, and the parentage judgment is based on Family Code section 7613.
   i. ☐ The child was conceived under a surrogacy agreement.
   j. ☐ The request is not in the best interest of the child because *(specify):*

   k. ☐ Other *(specify):*

☐ Contained in the attached declaration.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY MAKING REQUEST)

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.)

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

An adult *other than you* must complete the Proof of Service below and provide a copy of this response to the other party or the other party's attorney and the local child support agency, if they are providing services for the children in this case. See *Information Sheet for Service of Process* (form FL-611) for more information about completing a proof of service.

PROOF OF SERVICE

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

a. ☐ **Personal service.** I personally delivered a copy of this response as follows:

☐ (1) Name of party or attorney served:

(a) Address where delivered:

(b) Date of delivery:

(c) Time of delivery:

☐ (2) Name of local child support agency served:

(a) Address where delivered:

(b) Date of delivery:

(c) Time of delivery:

b. ☐ **Mail.** I deposited this response in the United States mail, in a sealed envelope with first-class postage fully prepaid, addressed as follows:

☐ (1) Name of party or attorney served:

(a) Address:

(b) Date of mailing:

(c) Time of mailing:

☐ (2) Name of local child support agency served:

(a) Address:

(b) Date of mailing:

(c) Time of mailing:

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PERSON WHO SERVED RESPONSE)

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
OTHER PARTY:		
ORDER AFTER HEARING ON MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. This matter proceeded as follows: ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept.: Judicial officer:
   b. ☐ Petitioner present ☐ Attorney present *(name):*
   c. ☐ Respondent present ☐ Attorney present *(name):*
   d. ☐ Other party present ☐ Attorney present *(name):*
   e. ☐ Children present *(name):* ☐ Attorney present *(name):*
   f. ☐ Guardian ad litem present *(name):*
   g. ☐ Attorney for local child support agency *(name):*
   h. ☐ Other *(specify):*
2. For purposes of this order
   a. the previously established father is *(name):*
   b. the previously established mother is *(name):*
   c. other *(specify):*

THE COURT FINDS

3. The following facts exist regarding the previously established father and the children listed below:

	Name of child	Date of birth	Genetic Father	Parentage Judgment	Signed Voluntary Declaration of Parentage or Paternity
a.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
b.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
c.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
d.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
e.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
f.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
g.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
h.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

   i. ☐ Additional children are listed on a page attached to this order.

Form Adopted for Mandatory Use
Judicial Council of California
FL-278 [Rev. January 1, 2020]

Family Code, §§ 7646, 7576, 7577
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

4. Other *(specify):*

THE COURT ORDERS

5. All orders previously made in this action will remain in full force and effect except as specifically modified below.

	Name of child	Date of birth	Judgment of Parentage Set Aside	Voluntary Declaration of Parentage or Paternity Set Aside
a.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
b.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
c.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
d.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
e.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
f.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
g.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
h.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A

i. ☐ Additional children are listed on a page attached to this order.

All child support and arrearage orders concerning each child for whom a previous judgment of parentage has been canceled (set aside) are vacated. The previously established father has no right to reimbursement for any child support paid before the cancellation (set-aside) of the judgment of parentage or voluntary declaration of parentage or paternity.

j. ☐ A judgment of nonparentage is granted with respect to the following children *(specify):*

k. ☐ The motion is denied, based upon the best interest of the child, with regard to the following children *(specify):*

6. For the children named in item 5k, the court denies the motion to cancel (set aside) because of *(check all that apply):*

a. ☐ The age of the child *(specify):*

b. ☐ The length of time since the entry of the judgment establishing parentage *(specify time period):*

c. ☐ The nature, duration, and quality of the relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship *(specify):*

d. ☐ The fact that the previously established father has requested that the parent-child relationship continue.

e. ☐ The fact that the biological father of the child does not oppose preservation of the relationship between the previously established father and the child.

f. ☐ The fact that there would be a detriment to the child if the genetic father were established as the parent *(explain):*

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

7. g. ☐ The fact that the previously established father has hindered the ability to discover the identity of, or get support from, the biological father *(specify):*

h. ☐ Other factors concerning the best interest of the child *(specify):*

8. ☐ If this order vacates or sets aside a voluntary declaration of parentage or paternity, the court clerk must send a copy of this order to the California Department of Child Support Services at *(specify address):*

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

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Number of pages attached: ________

Approved as conforming to court order: Date:
SIGNATURE OF ATTORNEY FOR *(specify):* ☐ PETITIONER ☐ RESPONDENT ☐ OTHER
Approved as conforming to court order: Date:
SIGNATURE OF ATTORNEY FOR *(specify):* ☐ PETITIONER ☐ RESPONDENT ☐ OTHER
Approved as conforming to court order: Date:
SIGNATURE OF ATTORNEY FOR *(specify):* ☐ PETITIONER ☐ RESPONDENT ☐ OTHER
Approved as conforming to court order: Date:
SIGNATURE OF ATTORNEY FOR *(specify):* ☐ PETITIONER ☐ RESPONDENT ☐ OTHER

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT 2** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT: OTHER PARTY:		
REQUEST FOR HEARING AND APPLICATION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY		CASE NUMBER:

INSTRUCTIONS

- Use this form if you want to cancel (set aside) a voluntary declaration of parentage or paternity. The declaration is a form that is usually signed at the hospital after a child is born. It can also be signed anytime after the child was born, even many years later.
- Complete items 5–10. For more information about completing this form, see *Information Sheet for Completing Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-281).
- After you complete the form, take the original plus three copies to the court clerk to file.
- After you file, copies of the form must be "served" on the other parties in the case. See *Information Sheet for Service of Process* (form FL-611) for more information about completing a proof of service.
- Make sure you go to the court hearing listed in item 1.

NOTICE OF HEARING

(FOR COURT USE ONLY)

1. **TO ALL PARTIES. A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room.:

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

2. **WARNING to the person served with this request:** The court may make the requested orders without you if you do not file a *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (**form FL-285**) and appear at the hearing. *(See page 2 of FL-285 for more information and instructions for "serving" your response.)*

It is ordered that:

3. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*
4. ☐ Any responsive declaration must be served on or before *(date):*

Date:

JUDICIAL OFFICER

REQUEST TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY

5. Person making this request
   a. My name is:
   b. I am the:
      (1) ☐ Petitioner
      (2) ☐ Respondent
      (3) ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-280 [Rev. January 1, 2020]

Family Code, §§ 7576, 7577;
Code of Civil Procedure, § 473
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

6. I request that the court order genetic testing, cancel (set aside) the voluntary declaration of parentage or paternity, and enter a judgment of nonparentage.

7. Information about the voluntary declaration of parentage or paternity *(attach a copy if you have one)*:
   a. Child's name: Child's date of birth:
   b. Names of the people who signed the voluntary declaration:
      (1)
      (2)
   c. Date signed *(if known)*:
   d. Date filed with the Department of Child Support Services *(if known)*:

8. ☐ Other cases involving the child *(check all that apply)*:
   a. ☐ Divorce, legal separation or, nullity *(case number, if known)*:
   b. ☐ Parentage, custody, or child support *(case number, if known)*:
   c. ☐ Other *(case number, if known)*:
   d. ☐ The local child support agency is providing services for the child in *(specify county)*:

9. ☐ A court order was entered based on the voluntary declaration of parentage or paternity on *(date)*: ,
   in case number *(specify)*:

10. Reasons for my request
    a. I ask that the court cancel (set aside) the voluntary declaration of parentage or paternity because of *(check all that apply)*:
       (1) ☐ Fraud (I was kept in ignorance of the true facts by another person)
       (2) ☐ Duress (I was threatened or mentally coerced)
       (3) ☐ Material mistake of fact (I thought the facts were different from what they really are)
       (4) ☐ The voluntary declaration is void (invalid) because *(specify)*:

       The following reasons apply only to voluntary declarations signed before January 1, 2020 ***or*** *if you did not sign the declaration.*

       (5) ☐ Perjury (someone lied when the voluntary declaration was signed)
       (6) ☐ My mistake, inadvertence, surprise, or excusable neglect
       (7) ☐ Other *(specify)*:
    b. Explain the facts that support your request:

☐ Contained in the attached declaration.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY MAKING REQUEST)

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.)

INFORMATION SHEET FOR COMPLETING *REQUEST FOR HEARING AND APPLICATION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY* (FORM FL-280)

(Do **not** deliver this information sheet to the court clerk.)

If you do not have a lawyer representing you, please follow these instructions to complete the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280). If you do have a lawyer representing you, the lawyer should complete the request. **Use form FL-280 if you want to set aside a voluntary declaration of parentage or paternity signed more than 60 days ago.** If you file this request, the court or the local child support agency may order you, the other person who signed the voluntary declaration, and the child to submit to genetic testing to determine the child's parentage.

You must file the completed *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* and attachments with the court clerk. You may have to pay a filing fee when you file it. **If you cannot afford to pay the filing fee, contact the court clerk to obtain forms to apply for a waiver of court fees. If you need assistance completing this form, see a family law facilitator. Provide an original *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* and attachments plus at least three copies for filing. Keep the copies of the filed request. The *Information Sheet for Service of Process* (form FL-611) gives more information about serving your request. Serve one copy on each of the people (besides you) who signed the voluntary declaration of parentage or paternity, along with a blank *Responsive Declaration to Application to Cancel (Set aside) Voluntary Declaration of Parentage or Paternity* (form FL-285). Serve another copy of the request on the local child support agency if that office is providing services in the case. Be sure to file your *Proof of Service* with the court clerk. Keep the other copy for your records. Someone other than you, who is at least 18 years old, must serve the other people (and the local child support agency, if applicable) with the request.**

Instructions for completing Form FL-280 *(type or print in ink)*

Page 1

First box, top of form, left side. Print your name, address, telephone number, and e-mail address, if any, in this box.

Second box, left side. Print the county name and the court address in the box. Use the same county name and court address that are on your judgment or order for parentage or support. If you do not have a parentage or support judgment, visit the following website to find the right court: *www.courts.ca.gov/find-my-court.htm*

Third box, left side.

If an order, a judgment, or a legal action has **not** been filed in the court based on the voluntary declaration of parentage or paternity:

a. Print your name in the space next to “Petitioner”;

b. Print the name of the other person who signed the voluntary declaration next to “Respondent”; and

c. Leave the space next to “Other Party” blank.

If an order, a judgment, or a legal action **has** been filed in the court based on the voluntary declaration of parentage or paternity, put the same names next to “Petitioner,” “Respondent,” and “Other Party” that are on the order, judgment, or other legal action that was filed in the court.

First box, top of form, right side. Leave this box blank for the court to use.

Second box, right side. Print the case number shown on your judgment or order for parentage, child support, visitation, or custody. If you do not have a judgment or order, the court clerk will give you a case number.

Instructions for Numbered Paragraphs

Page 1

Instructions for item 1. The court clerk will fill in the date, time, dept, or court address for setting a court hearing.

Instructions for items 3–4. If you need to have the court hear your case in less than the statutorily required time, you can ask the court for a sooner court date. If you need assistance, contact the family law facilitator in your county or go to *www.courts.ca.gov/selfhelp*.

Instructions for item 5. In the space provided, insert your name and check the box to indicate if you are the "Petitioner," "Respondent," or "Other." If you check the box for "Other," state your relationship to this case.

Page 2

In the box at the top of page 2, left side, fill in the names of the parties exactly as you did in the third box on page 1. In the box on the right side, fill in your case number as listed on page 1. If you do not have a case number, the clerk will give you one.

Instructions for item 7. Provide information about the voluntary declaration of parentage or paternity. In the spaces provided, list the child's name and date of birth. Then list the names of the people who signed the voluntary declaration and the date they signed it. Also list the date the voluntary declaration was filed with the Department of Child Support Services *(if known).*

Instructions for item 8. Check this box if there are other cases involving the child listed in the voluntary declaration.

a. Check this box for divorce, legal separation, or nullity and insert the case number *(if known).*

b. Check this box for parentage, custody, or child support and insert the case number *(if known).*

c. Check this box for any other type of case and insert the case number *(if known).*

d. Check this box if the local child support agency is providing services for the child and insert the county.

Instructions for item 9. Check this box if there is a judgment or court order for parentage, child support, visitation, or custody based on the voluntary declaration of parentage or paternity. Fill in the date the judgment or order was entered and list the case number.

Instructions for item 10a. Check the box or boxes to tell the court the reasons why you believe the voluntary declaration of parentage or paternity should be canceled (set aside).

(1) Check this box if you were a victim of fraud and someone kept you in ignorance of the true facts.

(2) Check this box if you were under duress and were threatened or mentally coerced regarding the signing of the voluntary declaration.

(3) Check this box if you made a material mistake of fact and thought that the facts were different from what they really are or were

(4) Check this box if someone committed perjury and lied when the voluntary declaration was signed.

(5) Check this box if any of the following statements describes the circumstances that existed at the time you signed or were unable or failed to sign the voluntary declaration of parentage or paternity:

- You misunderstood the facts;
- You did not pay attention to the consequences of not signing the voluntary declaration of parentage or paternity, and your lack of attention could not have been avoided with reasonable care and good sense;
- You were unexpectedly placed in the situation of not being able or failing to sign the voluntary declaration of parentage or paternity, and you could not have avoided the situation with reasonable care and good sense; or
- You were unable or failed to sign the voluntary declaration of parentage or paternity because of your neglect, and you could not have avoided being neglectful by using reasonable care and good sense.

(6) Check this box if you have other reasons why the court should cancel (set aside) the voluntary declaration of parentage or paternity and state the reasons.

*(**Note:** If you are one of the people who signed the voluntary declaration **and** it was signed or after January 1, 2020, it can only be canceled (set aside) because of fraud, duress, or material mistake of fact.)*

Instructions for item 10b. You must fully explain all of the reasons that you checked in item 10a of this request. Explain any delay in filing your request and why you believe it would be reasonable and fair to cancel (set aside) the voluntary declaration of parentage or paternity. If you need more space, you may attach additional sheets. Check the box labeled "Contained in the attached declaration" if you are attaching a declaration or additional sheets explaining your reasons for this request.

This motion must be filed within the following time frames:

- If you did not sign the declaration: within a two-year period commencing with the date of the child's birth, within one year of the date you either found out or should have found out that the declaration was signed because of fraud or perjury, **or** within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

- If the declaration was signed before January 1, 2020 **and** you signed the voluntary declaration: within a two-year period commencing with the date of the child's birth, within one year of the date you either found out or should have found out that the declaration was signed because of fraud or perjury, **or** within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

- If the declaration was signed after January 1, 2020 **and** you signed the voluntary declaration: within a two-year period commencing with the effective date of the voluntary declaration. (If both parents were 18 years or older when they signed the declaration, this is the date that the declaration was filed with the Department of Child Support Services.)

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

If you need additional assistance with this form, contact a lawyer or the family law facilitator in your county.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT: OTHER PARTY:		
RESPONSIVE DECLARATION TO APPLICATION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY		
HEARING DATE: TIME: DEPARTMENT OR ROOM:		CASE NUMBER:

INSTRUCTIONS

- Complete this form if you do not agree with the requests made in the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280) filed in this case.
- After you complete the form, take the original plus three copies to the court clerk to file.
- After you file, copies of the form must be "served" on the other parties in the case. See page 2 of this form for more information and to find out how to correctly "serve" this form.
- Make sure you go to the court hearing listed in item 1 of form FL-280.

1. Information about the voluntary declaration of parentage or paternity listed in the request:
   a. ☐ I agree with the information listed about the voluntary declaration of parentage or paternity.
   b. ☐ I do not agree with the information listed about the voluntary declaration of parentage or paternity because *(specify why you do not agree):*

2. Request for to cancel (set aside) voluntary declaration of parentage or paternity and order genetic testing:
   a. ☐ I agree to cancel (set aside) the voluntary declaration of parentage or paternity and submit to genetic testing.
   b. ☐ I do not agree to cancel (set aside) the voluntary declaration of parentage or paternity and submit to genetic testing.

3. ☐ Supporting information *(specify):*

☐ Contained in the attached declaration.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY MAKING REQUEST)

Form Adopted for Mandatory Use
Judicial Council of California
FL-285 [Rev. January 1, 2020]

Family Code, §§ 7576, 7577;
Code of Civil Procedure § 473
www.courts.ca.gov

INFORMATION SHEET FOR COMPLETING *RESPONSIVE DECLARATION TO APPLICATION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY*

If you do not have a lawyer representing you, please follow these instructions to complete the *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity.* If you do have a lawyer representing you, your lawyer should complete the responsive declaration. If you are receiving services from the local child support agency, you should contact them right away.

You must file the completed responsive declaration and attachments (if any) with the court clerk nine court days before the hearing date stated in item 1 of form FL-280. The address of the court clerk is the same as the one shown on the request. **If you need assistance completing this form, see a family law facilitator. Provide an original *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* plus three copies for filing. Keep three copies of the filed responsive declaration. The *Information Sheet for Service of Process* (form FL-611) explains what you must do to serve your responsive declaration. Serve one copy on the other person who signed the voluntary declaration of parentage or paternity, and be sure to file your *Proof of Service* with the court clerk. Serve the second copy on the local child support agency if that office is providing services in your case. Keep the third copy for your records. Someone other than you, who is at least 18 years old, must serve the other party (and the local child support agency, if applicable) with the responsive declaration.**

Instructions for completing Form FL-285 *(type or print in ink)*

First box, top of form, left side. Print your name, address and telephone number in this box.

Second box, left side. Print the same address for the court that is on the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

Third box, left side. Print the names of the petitioner and respondent in this box. Use the same names listed on the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

First box, top of form, right side. Leave this box blank for the court to use.

Second box, right side. Print the same case number shown on the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

Instructions for Numbered Paragraphs

1. Check the box to tell the court if you agree or do not agree with the information listed about the voluntary declaration of parentage or paternity in item 7 of the *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

2. Check the box to tell the court if you agree or do not agree to the court canceling (setting aside) the voluntary declaration of parentage or paternity and ordering genetic testing.

3. You must fully explain either the reasons you are agreeing to cancel (set aside) the voluntary declaration of parentage or paternity or the reasons you do not want the voluntary declaration of parentage or paternity to be canceled (set aside). If you need more space, you may attach additional sheets of paper. Check the box labeled "Contained in the attached declaration" if you are attaching a declaration or additional sheets explaining your reasons.

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

If you need additional assistance with this form, contact a lawyer or the family law facilitator in your county.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
OTHER PARTY:		
ORDER AFTER HEARING ON MOTION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY		CASE NUMBER:

1. This proceeding was heard
   on *(date):* in Dept.: Room:
   by *(judicial officer):*
2. a. ☐ Petitioner present ☐ Attorney present *(name):*
   b. ☐ Respondent present ☐ Attorney present *(name):*
   c. ☐ Other party present ☐ Attorney present *(name):*
   d. ☐ Attorney for local child support agency present (*name):*
   e. ☐ Other *(specify)*:
3. ☐ The voluntary declaration of parentage or paternity filed on *(date):* for *(child's name):*
   a. ☐ is not canceled (set aside).
   b. ☐ is canceled (set aside) on the following grounds *(specify):*
4. ☐ The parties are ordered to complete genetic testing by *(date):*
5. ☐ Genetic testing must be coordinated by the local child support agency.
   a. ☐ Petitioner ☐ Respondent ☐ Other party ☐ Other *(specify):*
   and the minor child must each submit to genetic testing as directed by the local child support agency.
   b. ☐ Petitioner ☐ Respondent ☐ Other party ☐ Other *(specify):*
   must advance the costs of the genetic testing.
   c. ☐ Petitioner ☐ Respondent ☐ Other party ☐ Other *(specify):*
   must reimburse the local child support agency for genetic testing costs of: $
6. ☐ A further hearing regarding the results of genetic testing is set for *(date):*
7. a. ☐ All orders regarding child support, custody, or visitation will continue until the date of the next hearing or further order.
   b. ☐ Orders are modified as follows *(specify):*
8. If the voluntary declaration of parentage or paternity is canceled (set aside), the court clerk must send a copy of this order to the California Department of Child Support Services: **DCSS-POP Unit, P.O. Box 419064, Rancho Cordova, CA 95741-9064**
9. Other *(specify):*

Date:

JUDICIAL OFFICER

Approved as conforming to court order:
Date:

(TYPE OR PRINT NAME)

SIGNATURE OF ATTORNEY FOR ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY

Form Adopted for Mandatory Use
Judicial Council of California
FL-290 [Rev. January 1, 2020]

ORDER AFTER HEARING ON MOTION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY (Family Law—Governmental)

Family Code, §§ 7576, 7577;
Code of Civil Procedure, § 473
www.courts.ca.gov

FL-300-INFO Information Sheet for Request for Order

1 USE *Request for Order* (form FL-300):

- To schedule a court hearing and ask the court to make new orders or to change orders in your case. The request can be about child custody, visitation (parenting time), child support, spousal or partner support, property, finances, attorney's fees and costs, or other matters.
- To change or end the domestic violence restraining orders granted by the court in *Restraining Order After Hearing* (form DV-130). See *How Do I Ask to Change or End a Domestic Violence Restraining Order* (form DV-400-INFO) for more information.

2 DO NOT USE *Request for Order* (form FL-300):

- Before you have filed a Petition to start your case (form FL-300 may be filed with the Petition).
- If you and the other party have an agreement. For information about how to write up your agreement, get it approved by the court, and filed in your case, see http://www.courts.ca.gov/selfhelp-agreeFL, speak with an attorney, or get help at your court's Self-Help Center or Family Law Facilitator's Office.
- When specific Judicial Council forms must be used to ask the court for orders. For example, to ask:
  - –For a domestic violence restraining order, use forms DV-100, DV-109, and DV-110.
  - –For an order for contempt, use form FL-410.
  - –To cancel a child support order, use form FL-360 or form FL-640.
  - –To cancel a voluntary declaration of parentage or paternity, use form FL-280.

3 Forms checklist

a. Form FL-300, *Request for Order,* is the basic form you need to file with the court. Depending on your request, you may need these additional forms:

b. To request child custody or visitation (parenting time) orders, you may need to complete some of these forms:
- ☐ FL-105, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act*
- ☐ FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment*
- ☐ FL-312, *Request for Child Abduction Prevention Orders*
- ☐ FL-341(C), *Children's Holiday Schedule Attachment*
- ☐ FL-341(D), *Additional Provisions—Physical Custody Attachment*
- ☐ FL-341(E), *Joint Legal Custody Attachment*

c. If you want child support, you need this form:
- ☐ A current FL-150, *Income and Expense Declaration*. You may use form FL-155, *Financial Statement (Simplified)* instead of form FL-150 if you meet the requirements listed on page 2 of form FL-155.

d. If you want spousal or partner support or orders about your finances, you need:
- ☐ A current FL-150, *Income and Expense Declaration*
- ☐ FL-157, *Spousal or Partner Support Declaration Attachment* (if the request is to change a support judgment)

e. If you want attorney's fees and costs, you need these forms:
- ☐ A current FL-150, *Income and Expense Declaration*
- ☐ FL-319, *Request for Attorney's Fees and Costs Attachment* (or provide the information in a declaration)
- ☐ FL-158, *Supporting Declaration for Attorney's Fees and Costs* (or provide the information in a declaration)

f. To request temporary emergency (ex parte) orders, you need:
- ☐ FL-305, *Temporary Emergency Orders* to serve as the proposed temporary emergency orders.
- ☐ Your declaration describing how and when you gave notice about the request for temporary emergency orders. You may use form FL-303, *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders*.
- ☐ Other forms required by local courts. See item 9 on page 3 of this form for more information.

g. If you plan to have witnesses testify at the hearing, you need form:
- ☐ FL-321, *Witness List*

h. If you want to request a separate trial (bifurcation) on an issue, you need form:
- ☐ FL-315, *Request or Response to Request for Separate Trial*

4 Complete form FL-300 (Page 1)

Caption: Complete the top portion with your name, address, and telephone number, and the court address. Next, write the name of the Petitioner, Respondent, or Other Parent/Party (You must use the party names as they appear in the petition that was originally filed with the court). Then, write the case number.

In the next section, check "CHANGE" if you want to change an existing order. Check "TEMPORARY EMERGENCY (EX PARTE) ORDER" if you are asking that the court make emergency orders that will be effective until the hearing date. Then, check all the boxes that apply to the orders you are requesting.

Item 1: List the name(s) of the other person(s) in your case who will receive your request. In some cases, this might include a grandparent who is joined as a party in the case, a local child support agency, or a lawyer who represents a child in the case.

Item 2: Leave this blank. The court clerk will fill in the date, time, and location of the hearing.

Item 3: This is a notice to all other parties.

Items 4–5: Leave these blank. The court will complete them if the orders are granted.

Item 6: In some counties, the court clerk will check item 6 and provide the details for your required child custody mediation or recommending counseling appointment. Other courts require the party or the party's lawyer to make the appointment and then complete item 6 before filing form FL-300.

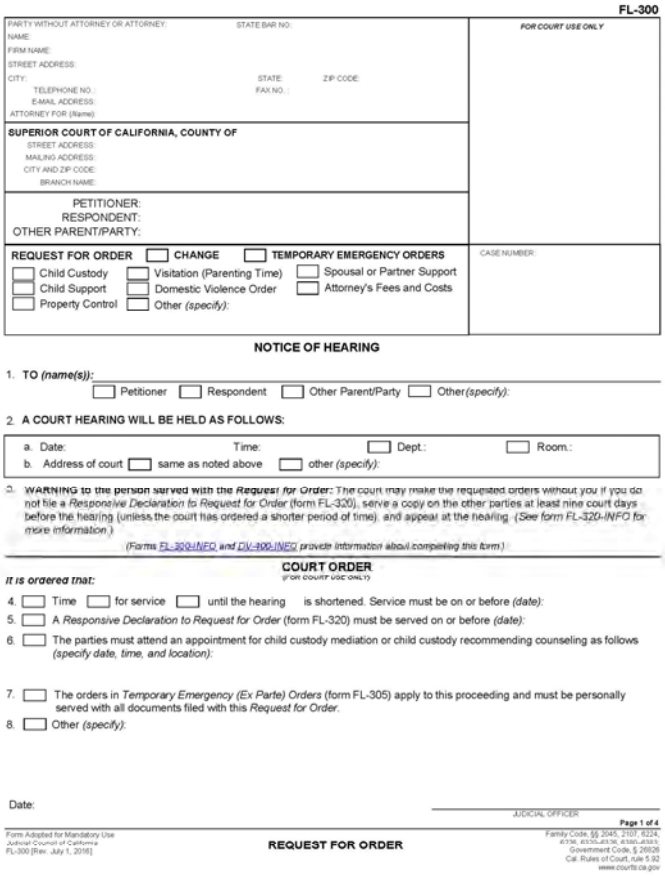
Ask your court's Family Law Facilitator or Self-Help Center to find out what your court requires.

Items: 7–8: Leave these blank. The court will complete them, if needed.

5 Complete form FL-300 (pages 2–4)

6 Complete additional forms and make copies

Complete any additional forms that you need to file with the *Request for Order.* Make at least two copies of your full packet.



FL-300

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO: FOR COURT USE ONLY
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITIONER:
RESPONDENT:
OTHER PARENT/PARTY:

REQUEST FOR ORDER ☐ CHANGE ☐ TEMPORARY EMERGENCY ORDERS
☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Domestic Violence Order ☐ Attorney's Fees and Costs
☐ Property Control ☐ Other (specify):

CASE NUMBER:

NOTICE OF HEARING

1. TO (name(s)):
☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other (specify):
2. A COURT HEARING WILL BE HELD AS FOLLOWS:
a. Date: Time: ☐ Dept.: ☐ Room.:
b. Address of court ☐ same as noted above ☐ other (specify):
3. **WARNING to the person served with the *Request for Order*:** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*
(Forms FL-300-INFO and DV-300-INFO provide information about completing this form.)

COURT ORDER
(FOR COURT USE ONLY)
It is ordered that:
4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*
5. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date):*
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location):*
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order.*
8. ☐ Other *(specify):*

Date: JUDICIAL OFFICER

Form Adopted for Mandatory Use Judicial Council of California FL-300 [Rev. July 1, 2018] **REQUEST FOR ORDER** Page 1 of 4
Family Code, §§ 2045, 2107, 6224, 6306, 6323.5, 6326, 6340, 6341; Government Code, § 26826; Cal. Rules of Court, rule 5.92
www.courts.ca.gov

Note: You may file one form FL-150 to respond to items 3, 4, and 6.

7 File your documents

Give your paperwork and the copies you made to the court clerk to process. You may take them to the clerk's office in person, mail them, or, in some counties, you can e-file them.

The clerk will keep the original and give you back the copies you made with a court date and time stamped on the first page of the *Request for Order*. The procedure may be different in some courts if you are requesting temporary emergency orders.

8 Pay filing fees

A fee is due at the time of filing.

If you cannot afford to pay the filing fee, and you do not already have a valid fee waiver order in this case, you can ask the court to waive the fee by completing and filing form FW-001, *Request to Waive Court Fees* and form FW-003, *Order on Court Fee Waiver.*

9 Temporary Emergency (Ex Parte) Orders
(nondomestic violence restraining orders)

Courts can make temporary orders in your family law case to respond to emergencies that cannot wait to be heard on the court's regular hearing calendar.

The emergency must involve an immediate danger or irreparable harm to a party or children in the case, or an immediate loss or damage to property.

To request these orders:

- Complete form FL-300. Describe the emergency and explain why you need the temporary emergency orders before the hearing.
- Complete form FL-305 to serve as your proposed temporary orders.
- Include a declaration describing how and when you notified the other parties (or why you could not give notice) about your request and the hearing (see form FL-303).
- Complete other forms if required by your local court rules.
- Follow your court's local procedures for reserving the day for the hearing, submitting your paperwork, and paying filing fees.

10 General information about "service"

"Service" is the act of giving your legal papers to all persons named as parties in the case so that they know what orders you are asking for and have information about the hearing.

If the other parties are NOT properly served, the judge cannot make the orders you requested on the date of the hearing.

11 Serve the Request for Order and blank forms

The other party must be "served" with a:

- Copy of the *Request for Order* and all the other forms and attachments filed with the court clerk.
- Copy of any temporary emergency orders granted.
- Blank form FL-320, *Responsive Declaration to Request for Order.*
- Blank form FL-150, *Income and Expense Declaration* (if you served form FL-150 or FL-155).

12 Who can be a "server"

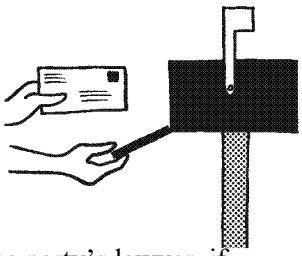
You cannot serve the papers. Have someone else (who is at least 18 years old) do it. The "server" can be a friend, a relative who is not involved in your case, a sheriff, or a professional process server.

13 "Personal Service"

Personal service means that your "server" walks up to each person to be served, makes sure the right person is being served, and hand-delivers a copy of all the papers (and the blank forms). If the person served does not take the papers, the server may leave the papers near the person.

Note: Sometimes the papers may be personally served on the other party's lawyer (if he or she has one) in the family law case.

14 "Service by mail"



means that your "server" places copies of all the documents (and blank forms) in a sealed envelope and mails them to the address of each party being served (or to the party's lawyer, if he or she has one).

The server must be 18 years of age or over and live or work in the county where the mailing took place.

Important! For questions about personal service or service by mail, talk with a lawyer or check with your court's Family Law Facilitator or Self-Help Center at ***http://www.courts.ca.gov/1083.htm***.

15 When to use personal service or service by mail

Personal Service

Personal service is the best way to make sure the other adults in your case are correctly served. Sometimes you **must** use personal service.

You **must** use personal service when the court:

- ☑ Ordered personal service;
- ☑ Granted temporary emergency orders;
- ☑ Does not yet have the power to make orders that apply to the other party because he or she has either NOT previously:
  - Been served with a *Summons* and *Petition;** *OR*
  - Appeared in the case by filing a:
    a. *Response* to a *Petition*;
    b. *Appearance, Stipulations, and Waivers;*
    c. Written notice of appearance;
    d. Request to strike all or part of the *Petition;* or
    e. Request to transfer the case.

*Note: A *Request for Order* may be served at the same time as the family law *Summons* and *Petition.*

1. After serving, the server must fill out a *Proof of Personal Service* (*form FL-330*) and give it to you. If the server needs instructions, the *Information Sheet for Proof of Personal Service* (form FL-330-INFO) can be provided.
2. Take the completed *Proof of Personal Service* form to the clerk's office (or e-file it, if available in your court) at least 5 court days before your hearing.

Deadline: The deadline for personal service is **16 court days** before the hearing date, unless the court orders a different deadline.

Service by Mail

If you are not required to use personal service, you may use service by mail.

Important! Check with your court's Family Law Facilitator's Office or Self-Help Center, or ask a lawyer to be sure you are allowed to use service by mail in your case.

A *Request for Order* to change a judgment or final order on the issue of child custody, visitation (parenting time), or child support may be served by mail if:

- ☑ The documents do not include temporary emergency orders;
- ☑ The court did not order personal service; and
- ☑ You have verified the other party's current residence or office address. (You may use *Address Verification* (form FL-334).)

To change a judgment or final order on any other issue, including spousal or domestic partner support, the *Request for Order* may need to be personally served on the other party.

1. After serving, the server must fill out a *Proof of Service by Mail* (*form FL-335*) and give it to you. If the server needs instructions, the *Information Sheet for Proof of Service by Mail* (*form FL-335-INFO*) can be provided.
2. Take the completed *Proof of Personal Service* form to the clerk's office (or e-file it, if available in your court) at least 5 court days before your hearing.

Deadline: Unless the court orders a different time, service by mail must be completed at least **16 court days *PLUS* 5 calendar days** before the hearing date (if service is in California). Other time lines apply for service outside of California.

16 Get ready for your hearing

- Take at least two copies of your documents and filed forms to the hearing. Include a filed *Proof of Service* form.
- Find more information about preparing for your hearing at http://www.courts.ca.gov/1094.htm.
- For information about having the other party testify in court, go to http://www.courts.ca.gov/29283.htm.

17 After the hearing, the order made on **form FL-340**, *Findings and Order After Hearing*, must be filed and served.

18 Do you have questions or need help?

- Find a lawyer through your local bar association, the State Bar of California at http://calbar.ca.gov, or the Lawyer Referral Service at 1-866-442-2529.
- For free and low-cost legal help (if you qualify), go to http://www.lawhelpca.org.
- Contact the Family Law Facilitator or Self-Help Center for information and assistance, and referrals to local legal services providers. Go to http://www.courts.ca.gov/selfhelp-courtresources.htm.

GOVERNMENTAL AGENCY (under Family Code, §§ 17400 and 17406):	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by the Judicial Council**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
SUMMONS AND ☐ COMPLAINT ☐ _____ SUPPLEMENTAL COMPLAINT ☐ _____ AMENDED COMPLAINT REGARDING PARENTAL OBLIGATIONS	CASE NUMBER:

TO *(name):*

The local child support agency has filed this lawsuit against you. This lawsuit says you and the other parent are the parents of each child named in this *Complaint* and that the obligor may be required to pay child support. The attached proposed *Judgment Regarding Parental Obligations* (form FL-630) names you and the other parent as parents of each child listed below and, if there is an amount stated in item 6 of the proposed *Judgment*, orders the obligor to pay support for these children. If you disagree with the proposed *Judgment*, you must file the attached ***Answer*** (form FL-610) form with the court clerk **within 30 days of the date that you were served with this *Complaint*. If you do not file an *Answer*, the proposed *Judgment* will become a final determination that you are the parent and responsible for support. If you are required to pay child support, the payments may be taken from your pay or other property without further notice.** See the attached statement of your rights and responsibilities for more information.

La agencia local que vigila la manutención de menores ha registrado la presente demanda contra usted. Esta demanda dice que usted y el otro padre son los padres de los hijos nombrados aqui y que el obligado deberá pagar manutención de menores. El propuesto FALLO RESPECTO A OBLIGACIONES PATERNAS (Gubernamental) (formulario FL-630) los nombra a usted y al otro padre como padres de cada uno de los hijos que figuran a continuación y, si se incluye una suma en el inciso ó, obliga al obligado a pagar manutención por estos hijos. Si no está de acuerdo con el FALLO propuesto, deberá registrar el formulario de RESPUESTA que se adjunta, presentándolo al actuario del tribunal dentro de 30 días después de haber recibido notificación de esta DEMANDA. Si usted no registra una RESPUESTA, el FALLO propuesto tomará efecto con una determinación final de paternidad. Si se le está exigiendo que pague manutención de menores, los pagos podrán ser deducidos de su salario o de otras pertenencias suyas sin necesidad de mandarle ninguna otra notificación. Para mayor información, vea la declaración anexa respecto a los derechos y responsabilidades que tiene.

1. The local child support agency is asking the court to issue judgment or orders for the following children:

Name	Date of Birth	Establish Parentage	Establish Support	Modify Order	Beginning Date
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	

☐ Additional children are listed on a page (labeled Attachment 1) attached to this *Complaint.*

Notice to person served: You are served

1. ☐ as an individual defendant/respondent.
2. ☐ on behalf of a minor child or children.
3. ☐ other *(specify):*

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
FL-600 [Rev. January 1, 2020]

SUMMONS AND COMPLAINT OR SUPPLEMENTAL COMPLAINT REGARDING PARENTAL OBLIGATIONS (Governmental)

Family Code §§ 2330.1, 17400, 17402, 17404, 17428, 17430
www.courts.ca.gov

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

2. a. The parents of the children named in item 1 are *(specify name):*

(specify name):

b. ☐ *(Specify name)* is named as the parent of the children listed in item 1 in the declaration of parentage on file with the ☐ local child support agency or the ☐ county welfare department.

c. The obligor (the parent asked to pay support) is *(specify):*

3. Complete the following section if support is being requested but the "Establish Parentage" box has not been checked in item 1. Please specify each child. You do not need to complete this section if a final judgment of parentage was previously entered under this case number.

a. ☐ A voluntary declaration of parentage or paternity that has not been canceled and was signed by both parents has been forwarded to the California Department of Child Support Services for the following children *(specify):*

b. ☐ The following are named as children of the marriage in a family law judgment in *(specify county and state)* in case number *(specify)* for the following children *(specify):*

c. ☐ Judgment of parentage has previously been entered in *(specify county and state)* in case number *(specify)* for the following children *(specify):*

d. ☐ Other *(specify):*

(Names of children):

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

4. a. ☐ Some or all of the children named in item 1 are receiving or have received public assistance from the following counties *(specify):*
   b. ☐ Date public assistance first paid:
5. Other *(specify):*

THE LOCAL CHILD SUPPORT AGENCY REQUESTS THAT:

6. ☐ The court determine that the persons listed in item 2 are the parents of the children listed in item 1 for whom the "Establish Parentage" boxes have been checked.

7. ☐ Based on the California support guideline, the court order the obligor to pay:
   a. ☐ $ current monthly child support based on the obligor's known income of $ per month, and, if applicable, the obligee's known income of $ per month.
   b. ☐ $ current monthly child support based on the obligor's presumed income, as provided by law.
   c. ☐ $ additional monthly child support for the following reasons *(specify):*
   d. ☐ The court issue appropriate orders for sharing the costs of child care and/or uninsured health care *(specify):*
   e. ☐ Other *(specify):*

8. ☐ The court order the obligor to provide health insurance for each child named in item 1, if available at no or reasonable cost; to keep the local child support agency informed of the availability of the coverage; to complete and return, within 20 days of the local child support agency's request, a health insurance form and that a *National Medical Support Notice* be issued. If health insurance is not available at no or reasonable cost, that the court orders obligor to provide coverage when it becomes available. **NOTICE:** The obligor's employer or other person providing health insurance will be ordered to enroll the children in an appropriate health insurance plan if the obligor is found to be the parent.

9. A wage and earnings assignment be issued.

10. The court order the parents to advise the local child support agency within 10 days in writing of any change in residence or employment.

11. The court order the obligor to make all payments to *(specify):*

12. ☐ The other parent be added as a party to this case.

13. Number of pages attached: _____

NOTICE

- **Child support:** The court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
- If you want legal advice, contact a lawyer immediately.
- **A Statement of Rights and Responsibilities is attached to this document. Please read it carefully.**

Date:

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

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

Hearing by Court Commissioner

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing, you* or any other party objects to the commissioner acting as a temporary judge. You can object to the commissioner acting as a temporary judge in one of two ways: (1) by telling the commissioner in court, at the start of your hearing, that you object or (2) by delivering a written objection to the court clerk. You must object before the hearing in your case begins. You do not have to give a reason for your objection. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days in writing (use *Notice of Objection* (form FL-666); otherwise, the recommended order will become a final order of the court). If you object to the recommended order, a judge will make a temporary order and set a new hearing.

Family Law Facilitator

Each superior court has a family law facilitator's office to provide education, information, and assistance to parents who have child support issues. The basic duties of the family law facilitator include:

- Providing educational materials;
- Distributing court forms;
- Providing assistance in completing forms;
- Preparing child support guideline calculations; and
- Providing referrals to the local child support agency, family court services, and other community agencies.

The family law facilitator is a neutral person whose services are available to any person who is NOT represented by an attorney. Both parties in the same case may receive assistance from the family law facilitator. There is no attorney-client privilege between the family law facilitator and any person assisted by the family law facilitator, and matters discussed with the family law facilitator are not confidential. No person can be represented by the family law facilitator.

STATEMENT OF RIGHTS AND RESPONSIBILITIES

NOTICE to the defendant/respondent: The proposed *Judgment Regarding Parental Obligations* will be entered against you unless you file your written *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610) with the court clerk within 30 days of the date you were served with the *Complaint*. The proposed *Judgment* will be entered whether or not you have a lawyer. If you were served with a form telling you the date of a court hearing, you should go to court on that date. An order may be entered without your input if you do not attend the hearing.

AVISO para el acusado: El FALLO propuesto entrará en efecto contra usted, a menos que dentro de 30 días desde cuando recibió notificación de la DEMANDA, usted registre por escrito una RESPUESTA A DEMANDA o DEMANDA SUPLEMENTAL RESPECTO A OBLIGACIONES PATERNAS (Gubernamental) (formulario 610). El FALLO propuesto entrará en efecto contra usted, tenga o no tenga usted un abogado. Si le dieron notificación con un formulario que especifica una fecha de audiencia, usted tiene que presentarse al tribunal en esa fecha. Si no asiste a la audiencia, una orden judicial podrá emitirse sin considerar su punto de vista.

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

NOTICE TO BOTH PARENTS

The local child support agency has sued both of you to determine whether you are the parents of the children listed and if one or both of you should be ordered to pay child support. The local child support agency does not represent any individual in this lawsuit, including either parent or the children. Carefully read this statement and the other papers that you received.

You have the right to be represented by a lawyer. If you dispute that you are the parent of the children listed in the *Complaint* and you do not have enough money for a lawyer, you may ask the court to appoint a lawyer to represent you on the issue of parentage.

☐ Other information about court-appointed lawyers *(specify):*

A blank *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610) is included in the papers that were served on you. If you did not receive an *Answer* form or if you would like another copy, you may get one from the local child support agency, the court clerk's office, or the family law facilitator. The family law facilitator can assist you in filling out the *Answer* form. **You must file your *Answer* form with the court clerk within 30 days of the date you were served with the *Complaint* whether or not you obtain an attorney.**

Settling Out of Court
You may contact the local child support agency to try to work out a settlement agreement. However, you must still file an *Answer* form within 30 days. If you and the local child support agency can reach an agreement regarding the requests made in the *Complaint*, you may sign a settlement agreement called a **stipulation**. By signing a stipulation, you are agreeing to give up your rights explained in this statement, you are agreeing that you are the parent of the children listed in the *Complaint*, and you are agreeing to obey all of the terms of the stipulation. The stipulation will become a court order that you must obey.

Going to Court
If you file your *Answer form, you* have the right to a court hearing, to subpoena witnesses, to ask questions of any witness against you, and to present evidence on your behalf. Genetic testing may be performed if the defendant questions parentage of the children listed in the *Complaint.* If the defendant refuses to cooperate in the genetic testing process, the issue of parentage may be resolved against the defendant. The costs of the genetic testing may be charged to one of you.

Earnings Assignment
All orders for support must contain an earnings assignment. If you are obligated to pay support, this assignment will require your employer or other payor to deduct support payments from your salary or earnings and send the payments to the local child support agency. Your employer may also be required to enroll your children in a health insurance plan and deduct the cost from your salary or earnings.

Any amounts you owe may be collected from your property, whether or not you are current in your payments toward past due support. Collection may be made by taking money owed to you by the state or federal government (such as tax refunds, unemployment and disability benefits, and lottery winnings), by taking property you own, by placing a lien on your property, or by any other lawful means. You may be fined or imprisoned if you fail to pay support as ordered.

If the local child support agency does not know how much money the obligor (parent asked to pay support) earns, the obligor is presumed to earn enough money to pay the amounts stated in item 6b of the proposed *Judgment Regarding Parental Obligations* (form FL-630).

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

Other Important Information
Both parents should tell the local child support agency everything they know about the other parent's earnings and assets.

The defendant is always a party to this action. If the other parent has requested or is receiving services from the local child support agency, that parent will become a party to the lawsuit filed by the local child support agency after the initial support order or medical support order is entered by the court. After the other parent has become a party to the lawsuit, either parent may then ask the court to decide issues concerning support, custody, visitation, and restraining orders (domestic violence). No other issues may be raised in this lawsuit. Either parent may go to court to modify the court order. The local child support agency cannot bring proceedings to establish or modify custody, visitation, or restraining orders.

After the other parent has become a party to the lawsuit, either parent may go to court to enforce the existing order against the other, but must first notify the local child support agency as required by law. The local child support agency is allowed 30 days to determine whether or not a parent will be permitted to proceed with the enforcement action against the other parent. The local child support agency may deny a parent permission to proceed if it is currently taking enforcement action or if the action by a parent would interfere with an investigation. If the local child support agency does not respond to the notice by the parent seeking enforcement within 30 days or if the local child support agency notifies the parent seeking enforcement that the enforcement action can proceed, the parent may then file the enforcement action as long as all support is paid through the local child support agency.

If the custodial person receives public assistance, the local child support agency may agree to settle any parentage or support issue in this lawsuit without providing advance notice to the custodial person. A child support agency may not settle any child support issue without the consent of any parent who is an applicant for child support services and who does not receive public assistance.

The local child support agency is required, under section 466(a)(13) of the Social Security Act, to place in the records pertaining to child support the social security number of any individual who is subject to a divorce decree, support order, or parentage determination or acknowledgment. This information is mandatory and will be kept on file at the local child support agency.

Your family law facilitator is available to help you with any questions you may have about the above information. You can reach your family law facilitator by telephone at:

or in person at:

For more information on finding a lawyer or family law facilitator, see the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp*.

PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO. *(Optional):* FAX NO. *(Optional):* E–MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by the Judicial Council**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
ANSWER TO COMPLAINT OR SUPPLEMENTAL COMPLAINT REGARDING PARENTAL OBLIGATIONS	CASE NUMBER:

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

If you disagree with the proposed judgment attached to the *Summons and Complaint*, you must file this *Answer* with the court clerk within 30 days of the date you were served with the *Complaint*. File the original *Answer* with the court clerk at the address for the superior court stated above and serve a copy on the local child support agency. Keep a copy for your records.

1. **PARENTAGE:** I am the parent of the following children:

		Name of child	Date of Birth
☐ Yes	☐ No		
☐ Yes	☐ No		
☐ Yes	☐ No		
☐ Yes	☐ No		
☐ Yes	☐ No		
☐ Yes	☐ No		

☐ Additional children are listed on a page attached to this *Answer.*

2. I request genetic testing to determine parentage be done for all children for whom I have checked a "No" box above. I understand that the local child support agency will pay for the cost of the testing now, but that I may have to repay those costs if the court decides that I am the parent.

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

4. ☐ I disagree with the proposed judgment for the following reasons *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-610 [Rev. January 1, 2020]

Family Code, §§ 17400, 17404, 2330.1
www.courts.ca.gov

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

5. My address and telephone number for receipt of all notices and court dates until I file a change with the court and with the local child support agency are as follows:

Address:
City and Zip Code:
Home Telephone:
Work Telephone:
E-mail Address *(optional):*

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

An adult other than you must complete the *Proof of Service* below and provide a copy of this *Answer* to the local child support agency at the following address *(specify):*

PROOF OF SERVICE

6. I am at least 18 years of age, and not a party to this action. I served this *Answer* and any other forms filed with the *Answer* on the local child support agency and any other party required to be served.

a. ☐ **Personal delivery.** I personally delivered this *Answer* to an employee of the local child support agency as follows:

(1) Name of employee:
(2) Address where delivered:

(3) Date of delivery:
(4) Time of delivery:

b. ☐ **Mail.** I deposited this *Answer* in the United States mail, in a sealed envelope with postage fully prepaid. I used first class mail. The envelope was addressed and mailed as follows:

(1) Name:
(2) Address:

(3) Date of mailing:
(4) 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) (SIGNATURE OF PERSON WHO SERVED ANSWER)

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

INFORMATION SHEET FOR ANSWER TO COMPLAINT

Please follow these instructions to complete the *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form.

You must file the completed *Answer* and attachments with the court clerk within 30 days of the date you received the *Summons and Complaint* (form FL-600). The address of the court clerk is the same as the one shown for the Superior Court on the *Summons and Complaint* (form FL-600). You may have to pay a filing fee. If you cannot afford to pay the filing fee, contact the court clerk to obtain forms to apply for a waiver of court fees. **Keep two copies of the filed *Answer* form and its attachments. Serve one copy on the local child support agency and keep the other copy for your records. (See *Information Sheet for Service of Process* (form FL-611).)**

Upon receipt of your filed *Answer*, the local child support agency will set a court hearing on this matter.

INSTRUCTIONS FOR COMPLETING THE *ANSWER* FORM (TYPE OR PRINT FORM IN BLACK INK):

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

1. For each child listed on the *Answer* form, you must check the "yes" box if you agree that you are that child's parent, or check the "no" box if you do not think or are not sure whether you are that child's parent. You must write in the name of each child listed in the *Summons and Complaint* (form FL-600) if your *Answer* form does not include the names of any children.

   NOTE: Checking the "no" box does not satisfy the requirements needed to set aside any voluntary declaration of parentage or paternity which you may have signed (Family Code sections 7576, 7577).

2. If you have checked a "no" box in answer to number 1 above, you must request genetic testing to determine whether you or the other parent is the parent. The local child support agency will tell you when and where to go for the test. The local child support agency will pay for the cost of the test now. If the court decides the test shows parentage as pleaded in the *Complaint*, you may have to repay this cost to the local child support agency.

3. a. Check this box if you agree to pay the support asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630) that you received.

   b. You should check this box if you do not agree to pay the support asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630).

4. If you agree to pay the support asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630), but you disagree with the proposed judgment for another reason, you should check this box and write your reasons in this space. **If you have documents that prove your reasons for disagreeing with the proposed *Judgment*, you should attach the documents to the *Answer* form.**

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

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

Instructions for how to complete the *Proof of Service* section of the *Answer* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the *Answer* and its attachments must fill out this section of the form. **You cannot serve your own *Answer*.**

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by the Judicial Council**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
STIPULATION FOR ☐ JUDGMENT ☐ SUPPLEMENTAL JUDGMENT REGARDING PARENTAL OBLIGATIONS AND JUDGMENT	CASE NUMBER:

1. This matter proceeded as follows:

a. ☐ By written stipulation without court appearance.

b. ☐ By court hearing, appearances as follows:

(1) Date: Dept: Judicial Officer:

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

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

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

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

(6) ☐ Other *(specify):*

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

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

3. **The parties agree that:**

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

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

☐ We agree to guideline support.

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

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

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

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

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

Form Adopted for Alternative Mandatory Use Instead of Form FL-692
Judicial Council of California
FL-615 [Rev. January 1, 2020]

STIPULATION FOR JUDGMENT OR SUPPLEMENTAL JUDGMENT REGARDING PARENTAL OBLIGATIONS AND JUDGMENT (Governmental)

Family Code, §§ 17400, 17402,17406
www.courts.ca.gov

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

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

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

Name of child	Date of birth	Monthly support amount

(1) ☐ Mandatory additional child support.

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

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

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

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

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

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

(2) ☐ Other *(specify):*

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

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

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

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

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

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

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

Name of child	Date of birth	Period of support	Amount

(1) ☐ Other *(specify):*

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

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

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

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

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

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

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

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

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

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

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

q. ☐ Other *(specify):*

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

Date:

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

Date:

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

Date:

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

Date:

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

Date:

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

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF OTHER PARENT)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR OTHER PARENT)

JUDGMENT

4. **THE COURT SO ORDERS.**

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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

ADVISEMENT AND WAIVER OF RIGHTS FOR STIPULATION

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

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

Date:

(TYPE OR PRINT NAME)

▶ (PARTY'S SIGNATURE)

☐ I understand the translation.

Date:

(TYPE OR PRINT NAME)

▶ (PARTY'S SIGNATURE)

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

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

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

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406)	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **Not approved by the Judicial Council**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
PROOF OF SERVICE BY MAIL	CASE NUMBER:

1. I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where the mailing took place.

2. My business address is *(specify):*

3. I served a copy of the following documents *(specify):*
   - ☐ *Notice of Motion (Governmental)* (form FL-680) and supporting attachments
   - ☐ *Responsive Declaration to Request for Order* (form FL-320)
   - ☐ *Response to Notice of Motion to Cancel (Set Aside) Judgment of Parentage (Family Law—Governmental)* (form FL-276)
   - ☐ *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity (Family Law—Governmental)* (form FL-285)
   - ☐ *Notice of Opposition and Notice of Motion on Claim of Exemption (Governmental)* (form FL-677)
   - ☐ Other *(specify):*

   by enclosing them in an envelope AND
   a. ☐ **depositing** the sealed envelope with the U.S. Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

Adopted for Mandatory Use
Judicial Council of California
FL-686 [Rev. January 1, 2020]

Code of Civil Procedure, §§ 1013, 1013a; Family Code § 215
www.courts.ca.gov

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

4. Each envelope was addressed and mailed as follows:
   (a) Date mailed:
   (b) Place of mailing *(city and state):*

☐ Name of party or attorney served:
(c) Address:

☐ Name of party or attorney served:
(c) Address:

☐ Name of party or attorney served:
(c) Address:

☐ Name of party or attorney served:
(c) Address:

☐ Name of party or attorney served:
(c) Address:

☐ Name of party or attorney served:
(c) Address:

5. The address for each individual identified in item 4 was
   a. ☐ verified by the California Child Support Enforcement System (CSE) as the current primary mailing address on file.
   b. ☐ other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

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

ADVISEMENT AND WAIVER OF RIGHTS FOR STIPULATION

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

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

Date:

(TYPE OR PRINT NAME) _____ (PARTY'S SIGNATURE) _____

INTERPRETER'S DECLARATION: The above-named party is unable to read or understand this *Advisement* because
☐ the party's primary language is *(specify):*
☐ Other *(specify):*

I certify under penalty of perjury under the laws of the State of California that I have, to the best of my ability, read or translated for the above-named party the *Minutes and/or Order or Judgment* and *Advisement and Waiver of Rights for Stipulation.* The above-named party said the terms of the order or judgment were understood by that party before signing it.

Date:

(TYPE OR PRINT NAME OF INTERPRETER) _____ (INTERPRETER'S SIGNATURE) _____

Form Approved for Court Use
in Lieu of Mandatory Form FL-615
Judicial Council of California
FL-694 [Rev. January 1, 2020]

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Legislative Addition of New Category of Child Custody Evaluator

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

Staff contact (name, phone and e-mail): Chris Cleary -(415) 865-8792 - christine.cleary@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: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisroy committee's purview. The amendment of this rule and revisions of these forms is necessary to maintain their legal accuracy, in light of recent legislation, Assembly Bill 2296, which adds an additional category of licensed child custody evaluator to the Family Code.

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

SPR19-37

Title
Family Law: Legislative Addition of New Category of Child Custody Evaluator

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.225; revise forms FL-325 and FL-326

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Chris Cleary, Attorney
(415) 865-8792
christine.cleary@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes to amend rule 5.225 of the California Rules of Court and two Judicial Council forms, FL-325 and FL-326, for use in family law custody proceedings. Changes are needed to conform to new legislation, Assembly Bill 2296 (Stats. 2018, ch. 389), which adds to Family Code section 3110.5(c)(5) an additional category of licensed child custody evaluator to those qualified to provide court-connected and private child custody evaluations.

Background

Rule 5.225 of the California Rules of Court was adopted on January 1, 2000, to establish the education, experience, and training requirements for child custody evaluators. The rule was amended effective January 1, 2005, to further clarify the education, training, and experience requirements and certification procedures for court-appointed child custody evaluators. In addition, forms FL-325 and FL-326 were adopted at that time to implement the rule. The rule and forms were further amended effective January 2007, to better assist the courts and evaluators in understanding and complying with all the appointment requirements for child custody evaluators.

The Proposal

This proposal to amend rule 5.225 and revise forms FL-325 and FL-326 is necessary because it is needed to respond to a recent change in the law (passage of AB 2296) to ensure that our rules and forms reflect the statutory change. It would add one additional category of child custody evaluator, "professional clinical counselor qualified to assess couples and families," to those licensed evaluators qualified to provide court-connected and private child custody evaluations. The proposal would benefit the judicial branch, along with attorneys and self-represented litigants who use the forms, by making the forms current with recent law.

Specific changes proposed

The following rule and forms changes are proposed:

- **Rule 5.225.** Add new subdivision (c)(1)(E), Professional clinical counselor qualified to assess couples and families.
- ***Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications*** **(form FL-325**). In item 4a add "professional clinical counselor qualified to assess couples and families" so that it reads: "I am licensed as a psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor qualified to assess couples and families; or"
- ***Declaration of Private Child Custody Evaluator Regarding Qualifications*** **(form FL-326).** In item 4a add "professional clinical counselor qualified to assess couples and families" so that it reads: "I am licensed as a psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor qualified to assess couples and families; or"

Alternatives Considered

Because these changes were legislatively required by AB 2296, no alternatives were considered.

Implementation Requirements, Costs, and Operational Impacts

Implementation requirements, costs, and operational impacts will be minimal since the only change to the rule and the forms is the addition of one new category of child custody evaluator.

Attachments and Links

1. Cal. Rules of Court, rule 5.225, at page 3
2. Forms FL-325 and FL-326, at pages 4–7
3. Link to AB 2296
   https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2296

Rule 5.225 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 5.225. Appointment requirements for child custody evaluators

(a)–(b) * * *

(c) Licensing requirements

A person appointed as a child custody evaluator meets the licensing criteria established by Family Code section 3110.5(c)(1)–(5)~~,~~ if:

(1) The person is licensed as a:

(A) Physician and is either a board-certified psychiatrist or has completed a residency in psychiatry;

(B) Psychologist;

(C) Marriage and family therapist; ~~or~~

(D) Clinical social worker~~.~~; or

(E) Professional clinical counselor qualified to assess couples and families.

(2) * * *

(d)–(o) *** * ***

EVALUATOR *(Name and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS *(Optional):*	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DECLARATION OF COURT-CONNECTED CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	

1. I, *(name):* , declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. As of *(date):* , I am a court-connected child custody evaluator or a person who supervises court-connected child custody evaluators for the above court.
3. I submit this form to indicate compliance with all applicable requirements for a court-connected child custody evaluator under rule 5.225 of the California Rules of Court for *(specify year):* .

LICENSING REQUIREMENTS

4. a. ☐ I am licensed as a psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor qualified to assess couples and families; or
   b. ☐ I am licensed as a physician and I am a board-certified psychiatrist, or I have completed a residency in psychiatry; or
5. a. ☐ I am not licensed, but I am eligible to be certified by the court to perform court-connected child custody evaluations under Family Code section 3110.5(c)(5) and rule 5.225(c)(2)(A) because:
      (1) I meet the requirements for a court-connected child custody evaluator under rule 5.225(j); and
      (2) I am being supervised by a court-connected child custody evaluator who has complied with all the requirements for court-connected child custody evaluators under rule 5.225; and
   b. ☐ I request that the court certify that I meet all the requirements for a court-connected evaluator under rule 5.225.
6. ☐ I am not licensed or eligible for certification as indicated in item 4 or 5.

   NOTICE: If item 6 is checked, the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B), all the following criteria have been met:

   (1) The court determined that there are no licensed or certified evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

   (2) The parties have stipulated that the person may conduct the child custody evaluation; and

   (3) The court approves the person's appointment.

EDUCATION AND TRAINING REQUIREMENTS

7. I have completed:
   a. ☐ The basic and advanced domestic violence training requirements for a court-connected child custody evaluator under rule 5.225(e); and
   b. ☐ The 40 hours of education and training requirements for a court-connected evaluator under rule 5.225(d); or
   c. ☐ At least 20 of the 40 hours of the education and training requirements for a court-connected evaluator. I will complete the remaining hours of education and training required by rule 5.225(d) within 12 months of conducting my first evaluation as a court-connected child custody evaluator.

CONTINUING EDUCATION AND TRAINING REQUIREMENTS

8. a. ☐ I have recently completed the initial education and training in item 7. I must complete the continuing education and training requirements of rule 5.225(i) by *(specify date):* (within 18 months after completing the initial education and training described in items 7a and 7b).

Form Adopted for Mandatory Use
Judicial Council of California
FL-325 [Rev. Jan. 1, 2020]

Family Code, §§ 1816, 3110.5;
Cal. Rules of Court, rules 5.225, 5.230
www.courts.ca.gov

EVALUATIOR'S NAME:	

8. b. ☐ I have completed the continuing education and training requirements within the 12-month period immediately preceding the date I signed this declaration:

   (1) ☐ 8 hours of update training requirements covering the subjects described in rule 5.225(d)

   (2) ☐ 4 hours of domestic violence update training under rule 5.230

9. ☐ I have complied with the experience requirements for a court-connected child custody evaluator specified in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years.

   a. ☐ I independently conducted and completed the child custody evaluations as stated in rule 5.225(g)(1)(A); or

   b. ☐ I materially assisted another evaluator as stated in rule 5.225(g)(1)(B).

10. ☐ I have complied with the experience requirements for those who supervise court-connected child custody evaluators because I conducted or materially assisted in the completion of four court-connected child custody evaluations in the preceding three years as stated in rule 5.225(g)(3).

11. ☐ I have not complied with the experience requirements for child custody evaluators stated in rule 5.225(g)(1).

NOTICE: If item 11 is checked, the court may not appoint a court-connected evaluator to perform a child custody evaluation unless, under rule 5.225(g)(2), all the following criteria have been met:

(1) The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

(2) The parties have stipulated that the person may conduct the evaluation; and

(3) The court approves the person's appointment.

USE OF INTERNS

12. ☐ I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(m) and will work under my supervision at all times.

NOTICE

All court-connected child custody evaluators must submit this form to the court executive officer or his or her designee. Court-connected child custody evaluators appointed as of January 1 of a given year must submit this form by January 30 of that year. Court-connected evaluators beginning practice after January 1 must submit this form before beginning any work on the first child custody evaluation and by January 30 of every year thereafter. (Cal. Rules of Court, rule 5.225(*l*)(1)(A).)

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

CERTIFICATION

BASED ON THE FOREGOING, THE COURT CERTIFIES THAT THE ABOVE PERSON IS A COURT-CONNECTED CHILD CUSTODY EVALUATOR WHO MEETS ALL THE QUALIFICATIONS FOR COURT-CONNECTED EVALUATORS AS SPECIFIED BY THE JUDICIAL COUNCIL IN RULE 5.225 OF THE CALIFORNIA RULES OF COURT.

Date:

☐ JUDGE ☐ COMMISSIONER

EVALUATOR *(Name and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS *(Optional):*	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	CASE NUMBER:

1. I, *(name):* , declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. As of *(date):* , I was appointed by the court to perform a child custody evaluation in this case.
3. I submit this form to indicate compliance with all applicable requirements for a private child custody evaluator under rule 5.225 of the California Rules of Court at the time of my appointment to this case.

LICENSING REQUIREMENTS

4. a. ☐ I am licensed as a psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor qualified to assess couples and families; or
   b. ☐ I am licensed as a physician and I am a board-certified psychiatrist, or I have completed a residency in psychiatry; or
   c. ☐ I am not licensed as indicated in 4a or 4b.

   NOTICE: If item 4c is checked the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B) of the California Rules of Court, all the following criteria have been met:

   (1) The court determined that there are no evaluators who meet the licensing requirements who are willing and available, within a reasonable period of time, to perform child custody evaluations;

   (2) The parties have stipulated that the person may conduct the child custody evaluation; and

   (3) The court approves the person's appointment.

EDUCATION AND TRAINING REQUIREMENTS

5. I have completed:
   a. ☐ The basic and advanced domestic violence training requirements under rule 5.225(e); and
   b. ☐ The 40 hours of education and training requirements under rule 5.225(d).

CONTINUING EDUCATION AND TRAINING REQUIREMENTS

6. a. ☐ I have recently completed the initial education and training in item 5. I am required to complete the continuing education requirements of rule 5.225(i) by *(specify):* (within 18 months after completing the initial education and training described in item 5); or
   b. ☐ I have completed the continuing education and training requirements under rule 5.225(i) within the 12-month period immediately preceding my appointment to this case:
      (1) ☐ 8 hours of update training requirements covering the subjects described in rule 5.225(d)
      (2) ☐ 4 hours of domestic violence update training under rule 5.230

Form Adopted for Mandatory Use
Judicial Council of California
FL-326 [Rev. Jan. 1, 2020]

Family Code, §§ 1816, 3110.5;
Cal. Rules of Court, rules 5.225, 5.230
www.courts.ca.gov

EVALUATOR'S NAME: PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:

7. ☐ I have complied with the experience requirements for a private child custody evaluator specified in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years.
   a. ☐ I independently conducted and completed the child custody evaluations as required in rule 5.225(g)(1)(A); or
   b. ☐ I materially assisted another evaluator as stated in rule 5.225(g)(1)(B).

8. ☐ I have not complied with the experience requirements for child custody evaluators stated in rule 5.225(g)(1).

   NOTICE: If item 8 is checked, the court may not appoint an evaluator to perform a child custody evaluation unless, under rule 5.225(g)(2), all the following criteria have been met:

   (1) The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

   (2) The parties have stipulated that the person may conduct the evaluation; and

   (3) The court approves the person's appointment.

USE OF INTERNS

9. ☐ I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(m) and will work under my supervision at all times.

NOTICE

Private child custody evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and before beginning any work on the child custody evaluation. (Cal. Rules of Court, rule 5.225(*l*)(1)(B).)

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Technical Changes to Summary Dissolution Forms (revise forms FL-800 and FL-810)

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

Staff contact (name, phone and e-mail): Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018

Project description from annual agenda: FL-800 Joint Petition for Summary Dissolution:
Update to reflect change in cost of living per Family Code section 2400(b) as a technical change.

If requesting July 1 or out of cycle, explain: Delaying the revision of the dollar amounts on forms FL-800 and FL-810 until January 1, 2020, means that these forms would be legally inaccurate for about one year. For this reason, an effective date of September 1, 2019, is requested.

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: May 16–17, 2019

Title
Family Law: Technical Changes to Summary Dissolution Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-800 and FL-810

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
March 19, 2019

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends technical revisions to two family law summary dissolution forms. The technical changes are mandated by Family Code section 2400 to reflect an increase in the cost of living based on changes to the California Consumer Price Index.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2019:

1. Approve and adopt the calculations attached at page 4, which demonstrate an increase required to the maximum dollar amounts for community and separate property assets in summary dissolution forms FL-800 and FL-810; and

2. Revise forms FL-800 and FL-810 to reflect an increase in the maximum limits for community and separate property assets under Family Code section 2400(a)(7)[1] from $43,000 to $45,000.

The revised forms are attached at pages 5–28.

Relevant Previous Council Action

Effective July 1, 2017, the Judicial Council revised forms FL-800 and FL-810 to reflect an increase solely in the maximum limits for community and separate property assets under Family Code section 2400(a)(7), from $41,000 to $43,000.

Analysis/Rationale

Family Code section 2400(b) requires that on January 1 of each odd-numbered year, the dollar limitations on items indicated in Family Code section 2400(a)(6) and (a)(7) be adjusted to reflect any change in the value of the dollar.[2] Section 2400(b) requires that the Judicial Council compute and publish the adjusted amounts. The adjustments are computed by multiplying the base amount by the percentage change in the California Consumer Price Index (the calculation is attached at page 4). The results are then rounded to the nearest thousand dollars and published in summary dissolution forms FL-800 and FL-810.

Increases in the annual averages of the California Consumer Price Index between 2016 and 2018 require a $2,000 increase in the total fair market value of community and separate property assets for summary dissolution actions. Currently, to use the summary dissolution process, the parties' community property and separate property assets must not exceed $43,000 each. Those limits would increase to $45,000 to reflect an increase in the cost of living. However, it results in no change to the currently published $6,000 limit for unpaid community property obligations. To reflect the change:

- *Joint Petition for Summary Dissolution* (form FL-800) would be modified to increase the limitation on assets from $43,000 to $45,000; and

- The instructional booklet titled *Summary Dissolution Information* (form FL-810) would be modified to reflect the changes in form FL-800.[3] The Spanish translation of the booklet (form FL-810 S) would also be updated.

1 The total fair market value of community property and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan.

2 Since the January 1 figures only become available in February, these biannual modifications are made for the September 1 forms cycle.

3 The changes to form FL-810—on pages 7, 11, 13−17, and 21—are highlighted in the attachment.

Policy Implications
There are no policy implications associated with the recommended changes to forms FL-800 and FL-810.

Comments
This proposal was not circulated for comment. Under rule 10.22(d)(2) of the California Rules of Court, the adjustments proposed to forms FL-800 and FL-810 are minor substantive changes and unlikely to create controversy. In addition, the adjustments to forms FL-800 and FL-810 are required by statute.

Alternatives considered
Given the statutory requirement relating to the summary dissolution forms, no alternative actions were considered. Implementation of the revisions will require courts to incur standard reproduction costs for the forms.

Fiscal and Operational Impacts

There are no policy implications associated with the recommended changes to forms FL-800 and FL-810. Implementation of the revisions will require courts to incur standard reproduction costs for the forms.

Attachments and Links

Asset and Debt Limits in Summary Dissolution Proceedings (Fam. Code, § 2400)

Formula

Under Family Code section 2400(b), the dollar limits for community property debts and community and separate property assets in actions for summary dissolution shall be adjusted by multiplying the base amount by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars.

$$\textit{Adjusted limit} = \left[\frac{\textit{CCPI(AA) 2018} - \textit{CCPI(AA) 2016}}{\textit{CCPI(AA) 2016}} + 1 \right] \times \textit{Published limit}$$

Definition

CCPI(AA) is the California Consumer Price Index, Annual Average, as established by the California Department of Industrial Relations.

September 1, 2019, calculation and adjustment for community debts

Under Family Code section 2400(a)(6), effective September 1, 2019, there is no change to the maximum dollar amount for unpaid obligations incurred by either or both of the parties after their date of marriage, excluding the amount of any unpaid obligation with respect to automobile community debts. The calculation is as follows:

$$\$\mathbf{6,306.94} = \left[\frac{239.034 - 227.401}{227.401} + 1 \right] \times \$6,000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, remains the same as the current published limit, at $6,000.

September 1, 2019, calculation and adjustment for community and separate property assets

Under Family Code section 2400(a)(7), effective September 1, 2019, there is a $2,000 increase in the total fair market value of community and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan. The calculation is as follows:

$$\mathbf{\$45,197.30} = \left[\frac{239.034 - 227.401}{227.401} + 1 \right] \times \$43,000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, increases the current published limit to $45,000.

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MARRIAGE OR PARTNERSHIP OF PETITIONER 1: PETITIONER 2:	
JOINT PETITION FOR SUMMARY DISSOLUTION ☐ MARRIAGE ☐ DOMESTIC PARTNERSHIP	CASE NUMBER:

We petition for a summary dissolution of marriage, registered domestic partnership, or both and declare that all the following conditions exist on the date this petition is filed with the court:

1. We have read and understand the *Summary Dissolution Information* booklet (form FL-810).
2. a. ☐ We were married on *(date):*
   b. ☐ We registered as domestic partners on *(date):*
3. ☐ We separated on *(date):*
4. Less than five years have passed between the date of our marriage and/or registration of our domestic partnership and the date of our separation.
5. a. ☐ One of us has lived in California for at least six months and in the county of filing for at least the three months preceding the date of filing. Or we are only asking to end a domestic partnership registered in California.
   b. ☐ We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.
6. There are no minor children who were born of our relationship before or during our marriage or domestic partnership or adopted by us during our marriage or domestic partnership. Neither one of us, to our knowledge, is pregnant.
7. Neither of us has an interest in any real property anywhere. **(You may have a lease for a residence in which one of you lives. It must terminate within a year from the date of filing this petition. The lease must not include an option to purchase.)**
8. Except for obligations with respect to cars, on obligations incurred by either or both of us during our marriage or domestic partnership, we owe no more than $6,000.
9. The total fair market value of community property assets, not including what we owe on those assets and not including cars, is less than $45,000.
10. Neither of us has separate property assets, not including what we owe on those assets and not including cars, in excess of $45,000.
11. We each have filled out and given the other an *Income and Expense Declaration* (form FL-150).
12. We have complied with the preliminary disclosure requirements as follows:
    a. We each have disclosed information about the value and division of our property by filling out and giving each other copies of the documents listed in (1) or (2) below (specify):
       (1) ☐ The worksheets on pages 7, 9, and 11 of the *Summary Dissolution Information* booklet (form FL-810).
       (2) ☐ A *Declaration of Disclosure* (form FL-140), a *Schedule of Assets and Debts* (form FL-142), or *Property Declaration (form FL-160),* and all attachments to these forms.
    b. We have told each other in writing about any investment, business, or other income-producing opportunities that came up after we were separated based on investments made or work done during the marriage or domestic partnership and before our separation.
    c. We have exchanged all tax returns each of us has filed within the two years before disclosing the information described in 12a.

Form Adopted for Mandatory Use
Judicial Council of California
FL-800 [Rev. September 1, 2019]

JOINT PETITION FOR SUMMARY DISSOLUTION
(Family Law—Summary Dissolution)

Family Code, § 299, 2109, 2320, 2400-2406
www.courts.ca.gov

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

13. *(Check whichever statement is true.)*
    a. ☐ We have no community assets or liabilities.
    b. ☐ We have signed an agreement listing and dividing all our community assets and liabilities and have signed all the papers necessary to carry out our agreement. A copy of our agreement is attached to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825).
14. Irreconcilable differences have caused the irremediable breakdown of our marriage and/or domestic partnership, and each of us wishes to have the court dissolve our marriage and/or domestic partnership without our appearing before a judge.
15. a. ☐ Petitioner 1 desires to have his or her former name restored. That name is *(specify):*
    b. ☐ Petitioner 2 desires to have his or her former name restored. That name is *(specify):*
16. We each give up our rights to appeal and to move for a new trial after the effective date of our *Judgment of Dissolution*.
17. **Each of us forever gives up any right to spousal or partner support from the other.**
18. We each agree to keep the court and each other informed of any change of mailing address or phone number occurring within six months from the filing of this joint petition using the *Notice of Change of Address or Other Contact Information* (form MC-040).
19. We are submitting the original and three copies of the proposed *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and two stamped envelopes together with this petition. One envelope is addressed to Petitioner 1 and the other to Petitioner 2.
20. We agree that this matter may be determined by a commissioner sitting as a temporary judge.
21. **Mailing address of Petitioner 1**

    Name:
    Address:

    City:
    State:
    Zip Code:
22. **Mailing address of Petitioner 2**

    Name:
    Address:

    City:
    State:
    Zip Code:
23. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ _____
(SIGNATURE OF PETITIONER 1)

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ _____
(SIGNATURE OF PETITIONER 2)

NOTICES

Your marriage and/or domestic partnership will end six months from the date of filing this joint petition. Both petitioners will receive a stamped copy from the court of the *Judgment of Dissolution and Notice of Entry of Judgment* (from FL-825) stating the effective date of your dissolution. Until the effective date specified on form FL-825 for the dissolution of your marriage and/or domestic partnership, either one of you can stop this joint petition by filing a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). If you stop this joint petition, you will STILL be married or in a domestic partnership.

Dissolution may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar instrument. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit card accounts, other credit accounts, insurance policies, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or domestic partner or a court order. (See Fam. Code, §§ 231–235.)

DRAFT
Not Approved by the Judicial Council

SUMMARY DISSOLUTION INFORMATION

This booklet is available in English and Spanish from the office of the court clerk in the superior court of each county in California, or at *www.courts.ca.gov/selfhelp.htm*.

Este folleto puede obtenerse en inglés y en español en la Dirección de Registro Público del Condado (Office of the Court Clerk) o en la Corte Superior (Superior Court) de cada condado en el estado de California o en el sitio *www.sucorte.ca.gov*.

CONTENTS

I . WHAT IS THIS BOOKLET ABOUT?

This booklet describes a way to end a marriage, a domestic partnership, or both through a kind of divorce called **summary dissolution.**

The official word for **divorce** in California is **dissolution.** There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **regular dissolution.**

Summary dissolution is a shorter and easier way. But not everybody can use it. Briefly, a summary dissolution is possible for couples who

1. have no children together;
2. have been married and/or in a domestic partnership five years or less (this means that the time between the date you married or registered your domestic partnership and the date you separated from your spouse or partner is five years or less);
3. do not own very much;
4. do not owe very much;
5. do not want spousal or partner support from each other; and
6. have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to or in a domestic partnership with each other.

With this procedure, you will not have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage or domestic partnership. See page 19 for more details about how a lawyer can help you.

For a summary dissolution, you prepare and file a *Joint Petition for Summary Dissolution* (form FL-800), together with a property settlement agreement,* with the superior court clerk in your county. You will also prepare and turn in a *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825). Your divorce, ending your marriage and/or your domestic partnership, will be final six months after you file your *Joint Petition for Summary Dissolution*. During the six months while you wait for your divorce to become final, either of you can stop the process of summary dissolution if you change your mind. One of you can file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830), and that will stop the divorce. If either one of you still wants to get divorced, then that person will have to file for a regular dissolution with a *Petition—Marriage/Domestic Partnership* (form FL-100) unless you both agree to start a new summary dissolution process.

IMPORTANT! Domestic partners who qualify for a summary dissolution can choose to use the process described in this booklet OR a special summary dissolution for domestic partners through the California Secretary of State. You can find the California Secretary of State forms at *www.sos.ca.gov*. **There is no filing fee for this process.** If you choose to file to terminate your domestic partnership through the Secretary of State, do not use this guide.

This booklet will tell you

1. who can use the summary dissolution procedure;
2. what steps you must take to get a summary dissolution;
3. when it would help to see a lawyer; and
4. what risks you take when you use this procedure rather than the regular dissolution procedure.

If you wish to use the summary dissolution procedure, you must, at the time you file the joint petition, sign a statement that says you have read and understood this booklet. It is important for you to read the whole booklet very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. If you decide you want to stop the summary dissolution process and revoke your petition, it will tell you how to do that.

SPECIAL WARNING

If you are an undocumented person who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or to a lawful permanent resident, obtaining a dissolution within two years of your marriage may lead to your deportation. You should consult a lawyer before obtaining a divorce.

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* A property settlement agreement is an agreement that the two of you write or have someone write for you after you fill out the worksheets in this booklet. The agreement spells out how you will divide what you own and what you owe.

II. SOME TERMS YOU NEED TO KNOW

In the following pages, you will often see the terms *community property, separate property,* and *community obligations.* Those terms are explained in this section.

As a married couple or domestic partners, the two of you are, in the eyes of the law, a single unit. There are certain things that you **own together** rather than separately. And there may be certain debts that you **owe together.** If one of you borrows money or buys something on credit, the other one can be made to pay.

If your marriage or domestic partnership breaks up, you become two separate individuals again. Before that can happen, you have to decide what to do with the things you *own* as a couple and the money you *owe* as a couple.

The laws that cover these questions contain the terms *community property, separate property,* and *community obligations.* To understand what these terms mean, you should have a clear idea of the **length of time you lived together as spouses or domestic partners.** This is the period between the day you married or registered your domestic partnership and the day you separated.

It may not be easy to decide exactly when you separated. In most cases, the day of the separation is the day the couple stopped living together. However, you may want to choose the day when you definitely decided to get a divorce and took some action to show this (like telling your spouse or partner that you wanted a divorce).

Community Property

Community property is everything spouses or registered domestic partners **own together.**

In most cases that includes

1. money you now have that either of you earned during the time you were living together as spouses or partners; and
2. anything either of you bought with money earned during that period. It does not matter if only one of you earned or spent the money.

Separate Property

Separate property is everything spouses or registered domestic partners **own separately from each other.**

In most cases that includes

1. anything either of you owned before you got married or registered your domestic partnership;
2. anything either of you earned or received after your separation; and
3. anything either of you received, as a gift or by inheritance, at any time.

Community Obligations

Community obligations are the debts spouses or registered domestic partners **owe together.**

In most cases that includes anything you still owe on any debts either of you acquired during the time you were living together as spouses or registered domestic partners. (For instance, if you bought furniture on credit while you were married or domestic partners and living together, the unpaid balance is a part of your community obligations.) It usually does not matter if the debt was in the name of one spouse or domestic partner only, like on a credit card.

NOTE: If you have any questions about your separation date or about your property, it would be good to see a lawyer as these issues can be complicated. Also, if you lived together before your marriage or domestic partnership, you may wish to see a lawyer about possible additional rights either of you may have.

III. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

You can use the summary dissolution procedure only if **all** of the following statements are true about you at the time you file the *Joint Petition for Summary Dissolution* (form FL-800). Check this list very carefully. If even *one* of these statements is not true for you, you cannot get a divorce in this way.

____ 1. We have both read this booklet, and we both understand it.

____ 2. We have been married or registered as domestic partners five years or less between the date that we got married and/or registered our domestic partnership and the date we separated. *(Note that if you are trying to end both a marriage AND a domestic partnership at the same time through a summary dissolution, both your marriage and domestic partnership must have lasted five years or less.)*

____ 3. No children were born to the two of us together before or during our marriage and/or domestic partnership.

____ 4. We have no adopted children under 18 years of age.

____ 5. Neither one of us is pregnant.

____ 6. Neither of us owns any part of any land or buildings.

____ 7. Our community property is not worth more than $45,000. (Do not count cars in this total.)

____ 8. Neither of us has separate property worth more than $45,000. (Do not count cars in this total.)

____ 9. The total of our community obligations (other than cars) is $6,000 or less.**

For deciding on statements 7, 8, and 9, use the guide on pages 5–11.

____ 10. a. At least one of us has lived in California for the past six months or longer *and* has lived in the county where we are filing for dissolution for the past three months or longer; or

b. We are only asking to end a domestic partnership registered in California; or

c. We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.

____ 11. We have prepared and signed an agreement that states how we want our possessions and debts to be divided between us (or states that we have no community property or community obligations).

____ 12. We have both signed the joint petition and all other papers needed to carry out this agreement.

____ 13. Together with the joint petition, we will turn in the judgment of dissolution forms and two self-addressed stamped envelopes to the superior court.

____ 14. We both want to end the marriage and/or domestic partnership because of serious, permanent differences.

____ 15. We have both agreed to use the summary dissolution procedure rather than the regular dissolution procedure.

____ 16. We are both aware of the following facts:

a. There is a six-month waiting period, and either of us can stop the divorce at any time during this period.

b. The date that appears on the *Judgment of Dissolution of Marriage and Notice of Entry of Judgment* (form FL-825) we receive from the court as the "effective date" of the dissolution is the date our divorce will be final, unless one of us has asked to stop the divorce prior to that effective date.

c. After the dissolution becomes final, neither of us has any right to expect money or support from the other except that which is included in the property settlement agreement.

d. By choosing the summary dissolution procedure, we give up certain legal rights that we would have if we had used the regular dissolution procedure. These rights are explained on page 4.

IV. AN IMPORTANT DIFFERENCE BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION

With a regular dissolution, either spouse or partner can ask for a court hearing or trial. And with a regular dissolution, if either spouse or partner is unhappy with the judge's final decision, it is possible to challenge that decision. This can be done, for example, by asking for a new trial. It is also possible to **appeal** the decision by taking the case to a higher court.

With a summary dissolution, there is no trial or hearing. Couples who choose this method of getting a divorce do not have the right to ask for a new trial (since there is no trial) or the right to appeal the case to a higher court.

There are, however, some cases in which a divorce agreement under a summary dissolution can be challenged. You will have to see a lawyer about this. The court *may* have the power to set aside the divorce if you can show that one of the following things happened:

1. **You were treated unfairly in the property settlement agreement.**
   This is possible if you find out that the things you agreed to give your spouse or partner were much more valuable than you thought at the time of the dissolution.

2. **You went through the dissolution procedure against your will.**
   This is possible if you can show that your spouse or partner used threats or other kinds of unfair pressure to get you to go along with the divorce.

3. **There are serious mistakes in the original agreement.**
   Some kinds of mistakes can make the dissolution invalid, but you will have to go to court to prove the mistakes. It may be that one or both of you had a lot of property that you had forgotten about when you drew up the property settlement agreement. Or maybe a bank account mentioned in the agreement had much more money or much less money in it than your agreement states.

4. **Neither of you complied with preliminary disclosure requirements.**

   California law requires that you fully share all information about your property and debts as well as your income. You have to share this information before you sign your property settlement agreement.

   In summary dissolution cases, this means that you and your spouse or domestic partner must each complete and exchange: (1) an *Income and Expense Declaration* (form FL-150), (2) all tax returns you filed in the last two years, and (3) the property worksheets on pages 7, 9, and 11 (or a *Declaration of Disclosure* (form FL-140 and either a *Schedule of Assets and Debts* (form FL-142) or a *Property Declaration* (form FL-160)).

   In addition, each spouse or domestic partner must complete and give to the other spouse or partner a written statement about any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated.

Correcting mistakes and unfairness in a summary dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

V. HOW DO YOU FIGURE OUT THE VALUE OF YOUR PROPERTY AND THE AMOUNT OF YOUR DEBTS?

Section III, page 3, lists statements that must be true if you want to use the summary dissolution procedure.

Statement 7 reads: "Our community property is not worth more than $45,000."

Your community property is the money and things you own jointly as spouses or domestic partners. This was explained on page 2. The value of your community property is determined by adding together (1) the amount of **money** you have as community property and (2) the "fair market value" of the **possessions** you have as community property.

The **fair market value** is an estimate of the amount of money you could get if you sold these items to a stranger—for example, through a classified ad in the newspaper. It does **not** mean what you paid for it originally, and it does **not** mean how much it would cost you to replace it if you lost it.

One way of estimating the fair market value of your goods is to use prices for equivalent items in other people's classified ads for secondhand goods.

Three kinds of items go into figuring out your community property:

1. Money (as in bank accounts and credit union accounts);
2. Things you own outright (furniture that is already paid for, for example); and
3. Things you are buying on credit.

When you include things you still owe money on, subtract the amount of money you still owe on them from the fair market value.

You should not include the value of a car in this list.

Statement 8 reads: "Neither of us has separate property worth more than $45,000."

Separate property is property that each spouse or partner owns separately. The term is explained on page 2. Separate property includes the same kinds of things used in determining community property. And again, you should not include cars in this list.

Statement 9 reads: "The total of our community obligations (other than cars) is $6,000 or less."

Your community obligations are the debts that you and your spouse or partner owe jointly. The term is explained on page 2. List all the debts you have that you took on while you were living together as spouses or domestic partners. If you borrowed money before you got married or registered your domestic partnership, you do **not** have to include that in your community obligations. If you bought furniture on credit after you got married or registered your domestic partnership but before you separated, you **have to** include the amount of money you still owe on the furniture. If you bought a stereo after you separated, you do **not** have to include that.

Do not include car loans in this list.

NOTICE: The law for summary dissolution allows you to leave out cars when you figure out whether you are **eligible** for this kind of divorce. But if you do have cars as part of your community property, you still have to decide who is going to own them (and who is going to pay for them) after your divorce. You must include them in your property settlement agreement.

Worksheets to help you figure out these amounts are found on pages 6–11. You may use the following forms in this booklet to figure out the total of your community and separate property assets and obligations: (1) the worksheet on pages 7 (Value of Separate Property), (2) the worksheet on page 9 (Value and Division of Community Property), and (3) the worksheet on page 11 (Community Obligations and Their Division). Sample forms showing how to fill out those worksheets are on pages 6, 8, and 10.

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/partner** cannot be more than $45,000. The total fair market value of the **separate property of the other spouse/partner** cannot be more than $45,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
Credit union savings—Pat (before marriage)	420	
Savings bonds—Chris (bought before marriage)		250
Pension plan benefits—Pat (before marriage and after separation)	1500	
Pension plan benefits—Chris (before marriage and after separation)		1300

B. Items owned outright

Item	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
Clothes—Pat (bought before marriage)	350	
Stocks—Pat (birthday present from father)	375	
Furniture—Pat (owned before marriage)	460	
Camera—Chris (owned before marriage)		229
Wristwatch—Chris (bought after separation)		142
Clothes—Chris (bought after separation)		250

C. Items being bought on credit

Item	Fair Market Value	Minus What's Owed =	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
TV set—Pat (after separation)	400	350	50	
Clothes—Pat (after separation)	220	170	50	
GRAND TOTALS: Pat and Chris SEPARATE PROPERTY			3205	2171

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/partner** cannot be more than $45,000. The total fair market value of the **separate property of the other spouse/partner** cannot be more than $45,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	PETITIONER 1 Property— Fair Market Value	PETITIONER 2 Property— Fair Market Value

B. Items owned outright

Item		

C. Items being bought on credit

Item	Fair Market Value	Minus What's Owed =		
GRAND TOTALS: PETITIONER 1'S AND PETITIONER 2'S SEPARATE PROPERTY				

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $45,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	Pat Receives	Chris Receives
Savings account	150	150	
Life insurance (cash value)	250	250	
Pension plan—Pat	600	600	
Pension plan—Chris	500		500
Checking account	180		180
Subtotal A	1680	1000	680

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	Pat Receives	Chris Receives
Furniture & furnishings— Pat's apartment	775	775	
Furniture & furnishings—Chris's apartment	300		300
Terriers season tickets	285		285
Savings bonds	200	200	
Jewelry—Pat	200	200	
Pet parrot and cage	40		40
Subtotal B	1800	1175	625

C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	Pat Receives	Chris Receives
Stereo set	305	150	155		155
Color television	400	100	300		300
Golf clubs	350	50	300		300
		Subtotal C	755	0	755
Grand total value of community property = A + B + C			4235	2175	2060

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $45,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal A			

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal B			

C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal C					
Grand total value of community property = A + B + C					

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information and make sure you indicate if you are married, in a domestic partnership, or both.

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Pat Will Pay	Chris Will Pay
Stereo set	150		150
Color TV	100		100
Golf clubs	50		50
Dr. R.C. Himple	74		74
Sam's Drugs	32		32
College loan	500		500
Cogwell's charge account	275	275	
Mister Charge account	68		68
Green's Furniture	123	123	
Dr. Irving Roberts	37	37	
Pat's parents	150	150	
TOTAL	1559	585	974
		Pat's Share of Community Obligations	**Chris's Share of Community Obligations**

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Petitioner 1 Will Pay	Petitioner 2 Will Pay
TOTAL			
		Petitioner 1 Share of Community Obligations	**Petitioner 2 Share of Community Obligations**

VII. WHAT SHOULD BE INCLUDED IN THE PROPERTY SETTLEMENT AGREEMENT?

A property settlement agreement should contain at least five parts:

I. **Preliminary Statement**
This part identifies the spouses or domestic partners, states that the marriage and/or domestic partnership is being ended, and states that both spouses or partners agree on the details of the agreement.

II. **Division of Community Property**
This part has two sections:
1. What the one spouse or partner receives; and
2. What the other spouse or partner receives.

III. **Division of Community Obligations**
This part has two sections:
1. The amount one spouse or partner must pay and whom he or she must pay it to.
2. The amount the other spouse or partner must pay and whom he or she must pay it to.

IV. **Waiver of Spousal Support**
This part states that each spouse or partner gives up all rights of financial support from the other.

V. **Date and Signature**
Both spouses or partners must write the date and sign the agreement.

An example of a property settlement agreement is found on pages 13–15.

VIII. SAMPLE PROPERTY SETTLEMENT AGREEMENT

Below is a sample of an acceptable **property settlement agreement.** You may use it as a model for your own agreement if you wish. You can find a fill-in-the blanks version of this agreement at *www.courts.ca.gov/selfhelp* in the section on summary dissolution.

- The parts that are underlined will fit most cases. You can copy these parts for your own agreement. Since many of the words have special meanings in the law, you may wish to talk to a lawyer if you want to change the words.
- The parts printed in regular type (not underlined) are based on an imaginary couple. You will need to replace these parts with items that apply to your situation.
- The numbered notes in *italics* in the right-hand column are **not** part of the agreement. They are there to help you understand it. (You will not need the small [1] and [2] in the sample for your agreement.)
- The sample below is for a married couple, so it refers to marriage. If you are ending a domestic partnership, you should say that in your agreement. If you are ending both a marriage and a domestic partnership with the same person, say both and write in the dates of both your marriage and the registration of your domestic partnership.

Remember, you can divide the items any way you want. As long as you both agree, the court will accept it. If you cannot agree about the division of your property and debts, you should file a regular dissolution.*

PROPERTY SETTLEMENT AGREEMENT

1. We are Chris P. Smedlap, hereafter called Chris,[1] and Pat T. Smedlap, hereafter called Pat.[1] We were married on October 7, 2015, and separated on December 5, 2016. Because irreconcilable differences[2] have caused the permanent breakdown of our marriage, we have made this agreement together to settle once and for all what we owe to each other and what we can expect from each other. Each of us states here that nothing has been held back and that we have honestly included everything we could think of in listing the money and goods that we own; and each of us states here that we believe the other has been open and honest in writing this agreement. Each of us agrees to sign and exchange any papers that might be needed to complete this agreement.

[1] *If you prefer, you can also write "hereafter called "Wife" or "Husband" or "Partner A" or "Partner B" whichever applies. Just make sure it is clear to whom you are referring.*

[2] *This means there are problems in your marriage or domestic partnership that you think can never be solved.* ***Irreconcilable differences*** *is the only legal grounds for getting a* ***summary dissolution.***

* At the trial in a regular dissolution, a judge would set a value on and divide community property and debts into two approximately equal parts as provided by California law.

Each of us also understands that even after a *Joint Petition for Summary Dissolution* is filed, this entire agreement will be canceled if either of us revokes the dissolution proceeding.[3]

II. Division of Community Property[4]

We divide our community property as follows:

1. Chris transfers to Pat as Pat's sole and separate property:

   A. All household furniture and furnishings located at the apartment at 180 Needlepoint Way, San Francisco.[5]

   B. All rights to cash in savings account at Home Savings.

   C. All cash value in life insurance policy insuring life of Pat through Sun Valley Life Insurance.

   D. All retirement and pension plan benefits earned by Pat during marriage.

   E. Two U.S. Savings Bonds, Series E.

   F. Pat's jewelry.

   G. 2013 Chevrolet 4-door sedan.

2. Pat transfers to Chris as Chris's sole and separate property:

   A. All household furniture and furnishings located at the apartment on 222 Bond Street, San Francisco.

   B. All retirement and pension plan benefits earned by Chris during marriage.

   C. Season tickets to Golden State Terriers basketball games.

   D. One stereo set.

   E. One set of Jock Nicklaus golf clubs.

   F. One RAC color television.

   G. 2013 Ford station wagon.

   H. One pet parrot named Arthur, plus cage and parrot food.

   I. All rights to cash in checking account in Bank of America.

[3] *This means that the property agreement is a part of the dissolution proceeding. If either of you decides to stop the dissolution proceeding by turning in a* Notice of Revocation of Petition for Summary Dissolution *(form FL-830) (see page 18), this entire agreement will be canceled.*

[4] *Community property is property that you own as a couple (see page 2).*

If you have no community property, replace Part II with the simple statement ***"We have no community property."***

[5] *If the furniture and household goods in one apartment are to be divided, they may have to be listed item by item.*

III. Division of Community Property (Debts)[6]

1. Chris will pay the following debts and will not at any time hold Pat responsible for them:

   A. Mister Charge account.

   B. Debt to Dr. R.C. Himple.

   C. Debt to Sam's Drugs.

   D. Debt to UC Berkeley for college education loan to Chris.[7]

   E. Debt to Golf Store for golf clubs.

   F. Debt to Everything Electronics for color TV and stereo set.

   G. Debt to Used Ford Store for 2003 Ford.

2. Pat will pay the following debts and will not at any time hold Chris responsible for them:

   A. Cogwell's charge account.

   B. Debt to Pat's parents, Mr. and Mrs. Joseph Smith.

   C. Debt to Green's Furniture.

   D. Debt to Dr. Irving Roberts.

   E. Debt to Friendly Finance Company for 2003 Chevrolet 4-door Sedan.

IV. Waiver of Spousal/Partner Support[8]

Each of us waives any claim for spousal/partner support now and for all time.

V. Dated: Dated:

_____ _____

Chris P. Smedlap Pat T. Smedlap

[6] *If you have no unpaid debts, replace Part III with the simple statement* ***"We have no unpaid community obligations."***

[7] *A general rule for dividing debts is to give the debt over to the person who benefited more from the item. In the sample agreement, because Chris received the education, Chris should pay off the loan.*

[8] *You each give up the right to have your spouse or partner support you.*

IX. WHAT STEPS DO YOU HAVE TO TAKE TO GET A SUMMARY DISSOLUTION?

If after reviewing the information in this booklet, you feel your marriage or your domestic partnership will qualify for a summary dissolution, you should carefully go through the following 15 steps. You can fill out the forms, worksheets, and agreements in the summary dissolution section

- online, for free, at *www.courts.ca.gov/selfhelp;*
- with a typewriter; or
- with neat printing.

1. _____ Complete and give your spouse or domestic partner a list of community and separate property assets and obligations. This information is needed to comply with the requirement to exchange a preliminary declaration of disclosure in summary dissolution cases. Use the forms listed below in 1a or 1b for this purpose.

   a. _____ A *Declaration of Disclosure* (form FL-140) and a *Schedule of Assets and Debts* (form FL-142) (or a *Property Declaration* (form FL-160)). These forms are not included in this booklet. You may find them online at *www.courts.ca.gov/forms.htm.* Give one copy to your spouse or domestic partner and keep one for your records; or

   b. _____ The worksheets in this booklet on pages 7, 9, and 11.

      (1) _____ Turn to page 7 and complete the Worksheet for Determining Value of Separate Property. See page 6 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.

      (2) _____ Turn to page 9 and complete the Worksheet for Determining Value and Division of Community Property. See page 8 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.

      (3) _____ Turn to page 11 and complete the Worksheet for Determining Community Obligations and Their Division. See page 10 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.

2. _____ Along with the documents listed in 1, give your spouse or domestic partner all tax returns you filed in the last two years. Give one copy to your spouse or domestic partner and keep one copy for your records.

3. _____ Fill out an *Income and Expense Declaration* (form FL-150). You each need to fill out this form and give it to your spouse or partner before you sign your property settlement agreement or complete your divorce. Make one extra copy of your form after it has been completed. Give one copy to your spouse or partner and keep one for your records.

4. _____ Complete a written statement about business and investments opportunities and give it to your spouse or partner before you sign a property settlement agreement or complete your divorce. Keep a copy for your records.

   Note: The written statement must describe any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated (there is no specific form for this purpose).

5. _____ Type or print your property settlement agreement if you have any property or debts to divide. Both of you must date and sign it. Make two extra copies. See pages 12–15 for an example and instructions. You can also find a version that you can fill in online at *www.courts.ca.gov/selfhelp* in the information on summary dissolution at *http://courts.ca.gov/1241.htm*.

6. _____ Fill out a *Joint Petition for Summary Dissolution* (form FL-800). *Both* of you must sign and date this petition. Make two extra copies of this form. (This is the form you need to ***START*** the process.)

   Note: *When signing your joint petition and your property settlement agreement, you are signing these documents under penalty of perjury under the laws of the State of California, which is the same as being sworn to testify in court.*

   You may not sign each other's name.

7. ____ Make three sets of forms that include copies of your property settlement agreement and a copy of your *Joint Petition for Summary Dissolution* (form FL-800). Staple each set together.

8. ____ Fill out the top portion of the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and make three copies of it.

9. ____ Make one extra copy of a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) so each of you has one, and hold on to it. This is the form you would need to **STOP** the process. You may wish to use it during the waiting period if you change your mind and want to stop the process. You should keep one copy. See page 18 for more information.

10 ____ Take your *Joint Petition for Summary Dissolution* (form FL-800), *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825), and all of your copies to the superior court clerk's office together with two self-addressed, stamped envelopes (one addressed to each spouse or partner). The location of your superior court clerk's office can be found in the phone book or online at *www.courts.ca.gov/find-my-court.htm.* The clerk will stamp the date on all copies, will keep one copy of each document, and will return the other two to you. One copy is for each spouse or partner.

11. ____ Pay the superior court clerk's filing fee. If you cannot afford to pay the filing fee, you may qualify for a fee waiver based on your income. If one of you qualifies for a fee waiver but the other one does not, the one who does not qualify will have to pay the filing fee. To request a fee waiver, see *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). You will need to prepare a *Request to Waive Court Fees* (form FW-001) and an *Order on Court Fee Waiver* (form FW-003).

12. ____ The clerk will file your joint petition and return the copies to you and your spouse or partner. The court may also process the *Judgment of Dissolution* at that time, in the next few weeks, or after the six-month waiting period has expired and give or mail it to you and your spouse or partner. The *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) will have a date on which the dissolution ending your marriage, domestic partnership, or both will be final. That is the effective date of your dissolution and it will be six months from the date you file your joint petition. The six-month waiting period is mandated by law.

13. ____ Put your copies of all documents in a safe place.

14. ____ Wait for six months. If either one of you wants to stop the summary dissolution case, fill out and file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) before the six months run out.

15. ____ On the day that appears on your *Judgment of Dissolution* and *Notice of Entry of Judgment (*form FL-825*)* as the effective date of your dissolution:
    a. Your marriage or domestic partnership (or both) is ended;
    b. The agreements you made in your property settlement agreement are binding—you will then own the property assigned to you, and you will have to pay the bills assigned to you;
    c. Except for those agreements, you and your spouse or partner have no further obligations to each other; and
    d. You are legally free to remarry or register a new domestic partnership.

REMEMBER: Either of you can stop the process by filling out a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) and bringing it to the superior court clerk during the six-month waiting period before the date your dissolution is effective according to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) that you received from the court.

X. WHAT YOU SHOULD KNOW ABOUT REVOCATION

It is important to realize that the *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) is not just another form you are supposed to fill out and turn in.

Do not fill it out and do not bring it to the superior court clerk unless you want to stop the divorce!

What is the notice of revocation for?
This is the form you need if you want to stop the divorce. **Revoking** the agreement is canceling or stopping it.

What reasons are there for revoking?

There are three reasons you might have for wanting to stop the summary dissolution:

1. You have decided to return to your spouse or partner and continue the marriage or domestic partnership;
2. You want to change over to the regular dissolution as a better way of getting your divorce; or
3. You learn that one of you is pregnant.

Why might you want to change over to the regular dissolution?
You may come to believe that you will get a better settlement if you go to court than with the agreement you originally made with your spouse or partner. (Maybe, after thinking it over, you feel you are not receiving a fair share of the community property.)

How do you do it?
At the time you picked up the joint petition forms, you and your spouse or partner also received a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). Fill out the form, sign it, make two copies, and bring them to the superior court clerk's office. You must also send a copy of form FL-830 to your spouse or domestic partner by first-class mail, postage prepaid, to his or her last known address. You can do this alone. This form does not need your spouse's or partner's signature.

If you do this at any time during the six-month waiting period, before the effective date of your dissolution, you will stop this divorce proceeding.

Can the dissolution be stopped once the waiting period is over?
NO. After the date the court wrote on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the date your marriage or domestic partnership is ended (the date the divorce is effective), you can no longer revoke the dissolution by filing the revocation form. You may have other legal options, but you will need to talk to a lawyer about them.

If you change over to a regular dissolution, what happens to the part of the waiting period that has passed? You can apply the amount of time you waited on the summary dissolution to your regular dissolution. For example, if four months went by before you decided to revoke the summary dissolution, the waiting period for the regular dissolution will be shortened by four months.

However, you can save this time **only** if you file for a regular dissolution within 90 days of revoking the summary dissolution.

XI. SHOULD YOU SEE A LAWYER?

Must you have a lawyer to use the summary dissolution procedure?
No. You can do the whole thing by yourselves. But it would be wise to see a lawyer before you decide to do it yourselves. You should not rely on this booklet only. It is not intended to take the place of a lawyer.

If you want legal advice, does that mean you have to hire a lawyer?
No. You may hire a lawyer, of course, but you can also just visit a lawyer once or twice for advice on how to carry out the dissolution proceeding. Do not be afraid to ask the lawyer in advance what fee will be charged. It may be surprisingly inexpensive to have a lawyer handle your divorce.

Do you have to accept your lawyer's advice?
No, you do not. And if you are not pleased with what one lawyer advises, you can feel free to go to another one.

How can a lawyer help you with the summary dissolution procedure?
First, a lawyer can advise you, on the basis of your personal situation, whether you ought to use the regular dissolution procedure rather than the summary dissolution procedure.

Second, a lawyer can read your property settlement agreement to help you figure out if you have thought of everything you should have. (It is easy to forget things you do not see very often, such as savings bonds and safe deposit boxes.)

Third, in many situations it is not easy to figure out what should count as community property and what should count as separate property. Suppose one of you had money before the marriage and put it into a bank account in both of your names and then both of you used money from that account. It may not be easy to decide how the money remaining in that account should be divided. A lawyer can advise you on how to make these decisions.

Fourth, there may be special situations in which your property settlement is not covered by the sample agreement on pages 13–15.

A lawyer can help you put the agreement in words that are legally precise and cannot be challenged or misinterpreted later.

Where can you find a lawyer?
You can locate organizations that can help you find a lawyer in the yellow pages of your telephone directory under "Attorneys," "Attorney Referral Service," or "Lawyer Referral Service." In many cases you will be able to find an attorney who will charge only a small fee for your first visit. You can get information about free or low-cost legal services through the county bar association in your county. You can find information about certified lawyer referral services at *www.courts.ca.gov/selfhelp* or on the State Bar website at *www.calbar.ca.gov.*

XII. SOME GENERAL INFORMATION

What about income taxes?
If you have filed a joint tax return, both of you will still be responsible for paying any unpaid taxes even after your divorce.

If you are receiving a tax refund, you should agree in the property settlement agreement on how it should be divided.

The amount of money that you will owe, or that will be taken out of your paycheck, for income taxes may be greater after you are single again. If that is the case, you should prepare yourself for a bigger tax obligation.

It would be a good idea to consult the Internal Revenue Service or a tax expert on how the divorce is going to affect your taxes. You should probably do this before you make your property settlement agreement.

What about bank accounts and credit cards?
If you have a joint bank account, it may be a good idea to close it when you separate and get two individual bank accounts. That way it will be easier to keep your money separate.

If you have credit card accounts that you both have been using, you should destroy the cards and take out separate accounts.

What about cars?
If both of your names are on a title to a car and you agree that one of you is going to own the car, you need to take action to change the ownership. You should call or visit the Department of Motor Vehicles to find out how to do that. You should also talk to the lender to get the debt into one person's name and change the insurance coverage after both the title and debt are transferred.

What if your spouse or domestic partner does not pay his or her debts?
If your spouse or domestic partner does not pay a debt that is his or her responsibility, the person who loaned the money may be able to collect it from you. But then a court may order your spouse or partner to reimburse you. If you have any reason to worry about this, a lawyer can explain your rights to you.

Can you take back your former name?
If you changed your name when you were married or registered your domestic partnership, you have the right to give up that name and get your former name back. You can do this by requesting it in the joint petition. If you do not request this in the joint petition, you can file a form called *Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order* (form FL-395). Your spouse or partner cannot make you change your name.

What if I am not happy with my final judgment?
When your divorce is final, all your rights and duties connected with your marriage or domestic partnership have ended and you cannot appeal. But if you decide later that you were cheated or pressured by your spouse or partner, or if you believe that a mistake was made in the paperwork connected with the divorce, the court may be able to set aside the divorce. A lawyer can explain your rights.

Item number: 43

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350; renumber form JV-350 as JV-350-INFO)

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 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.)

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: May 16-17, 2019

Title
Juvenile Law: Guardianship Information

Rules, Forms, Standards, or Statutes Affected
Revise forms JV-330 and JV-350; renumber form JV-350 as JV-350-INFO

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

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
April 8, 2019

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising two forms and renumbering one of those forms to provide up-to-date legal information for a prospective guardian of a child in juvenile court proceedings, using language and a format easily understood by a person not trained in law. The proposal is needed to reflect changes to the law and comply with an ongoing statutory mandate. Specific revisions were suggested, both informally and through the spring 2018 invitation-to-comment cycle, by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2019:

1. Revise *Letters of Guardianship (Juvenile)* (form JV-330) to clarify the terms of the letters of guardianship, clarify and expand the information being provided to guardians appointed by the juvenile court, and reorganize the various party and clerk signature items.

2. Revise, renumber, and retitle *Guardianship Pamphlet (Juvenile)* (form JV-350) to *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO), to clarify and update the legal information on the information sheet, and present the information in plain language and a user-friendly format.

The revised forms are attached at pages 7–13.

Relevant Previous Council Action

The Judicial Council most recently revised form JV-330 effective January 1, 2006. Form JV-350 was last revised effective January 1, 2001.

Analysis/Rationale

The Family and Juvenile Law Advisory Committee recommends revising *Letters of Guardianship (Juvenile)* (form JV-330) and revising, retitling, and renumbering *Guardianship Pamphlet* (form JV-350) as *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO) The revisions update legal information for prospective and appointed guardians of children in juvenile court proceedings. This information addresses the procedures for establishment, modification, and termination of juvenile court guardianships as well as the substantive powers and duties of a guardian. Much of the information in form JV-350 is out of date because the pamphlet was last revised in 2001; the recommended revisions to that form are needed to reflect changes to the law over the past 19 years and comply with an ongoing statutory mandate. Specific revisions to the forms were suggested, both informally and through the spring 2018 invitation-to-comment cycle, by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

Revisions to form JV-330

The revisions to form JV-330 are needed to specify the guardian's legal powers and duties. The Welfare and Institutions Code establishes the procedures for appointing, modifying, and terminating a juvenile court guardianship.[1] Section 366.4 provides that part 2 (beginning with section 1500) of division 4 of the Probate Code, related to appointment or termination of a guardian, does not apply to minors for whom a guardian is appointed under section 360 or 366.26.

[1] See Welf. & Inst. Code, §§ 360(a) (appointment of guardian at the dispositional hearing); 366.26(b)–(d) (appointment of guardian at hearing to select and implement a permanent plan); 366.3(a)–(d) (jurisdiction to modify or terminate guardianship); 366.4 (juvenile court jurisdiction over minors and nonminors for whom court appointed a guardian; application of part 4 (beginning with section 2100) of division 4 of the Probate Code to juvenile court guardianships when no provision of the Welfare and Institutions Code or California Rules of Court applies); 727.3(b)(3) (authorizing appointment of guardian as a permanent plan in juvenile justice proceedings); 728(c)–(f) (authorizing appointment of guardian in juvenile justice proceedings and applying procedures in section 366.26 to the appointment). All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

Section 366.4 goes on to those specify, however, that if no provision of the code or the California Rules of Court is applicable, the provisions of part 4 (beginning with section 2100) of division 4 of the Probate Code govern so far as they are applicable to like situations.[2] No provision of the code or rules is applicable to the appointed guardian's affirmation. The affirmation must therefore comply with the requirements of section 2300 of the Probate Code, which governs the oath of an appointed guardian. In a similar way, nothing in the code or the rules governs the issuance of letters of guardianship or their effect. Section 2310 of the Probate Code, which applies to letters of guardianship, governs. Finally, no provision of the code or the rules sets forth the rights and duties of a guardian. Sections 2351–2358 of the Probate Code, however, do so for guardians and conservators of the person. The committee has elected to specify in this form only those Probate Code sections—2351(a), 2352, and 2353—that apply specifically to the rights and duties of a guardian of the person, as that is almost always the type of guardian appointed by a juvenile court.[3]

The recommendation also revises the notice box at the foot of page one to indicate more clearly that the juvenile court, not the probate court, retains jurisdiction to regulate, modify, and terminate the guardianship, and specify that modification includes appointing a successor guardian and approving moving the child's residence out of California.[4] Probate courts have reported receiving frequent petitions to modify or terminate guardianships established by the juvenile court. The revised notice is intended to promote the filing of these petitions in the proper court and thereby to provide expeditious consideration of the orders requested.

The recommendation also reorganizes the form to separate the clerk's stamp and signature on initial issuance of the letters from the clerk's certification of a true copy, which must be completed only when the clerk prepared and provides a certified copy. Finally, the recommendation expands and clarifies the notice to the guardian of the purpose and intended use of the letters provided on the back page 2 of the form.

Revisions to form JV-350

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.) Reformatting the pamphlet as an informational form, renaming it *Becoming a Child's Guardian in Juvenile Court,* and renumbering it as form JV-350-INFO are intended to fulfill the supplemental mandate to use "language easily understood by a lay person not trained in law." (*Ibid.*) The revisions will help persons not trained

[2] Welf. & Inst. Code, § 366.4. All further references to rules are to the California Rules of Court.

[3] Item 2 on the form gives the court the option of granting additional powers, including powers over the minor's property, to the guardian and imposing additional conditions on the guardian's exercise of the rights and duties. See Prob. Code, § 2358.

[4] See *id.,* §§ 360(a), 366.3(b), 366.4, 728(f).

in law to understand the process of 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, in turn, better protect the children in the care and custody and need less court intervention after appointment.[5]

Revisions also update the information about eligibility under state and federal law for financial support and other benefits, which has changed significantly in the past five years, and inform a prospective guardian of the authority of the social worker or probation officer, added by Senate Bill 438 (Stats. 2017, ch. 307), to name a successor guardian in the assessment for appointment of an initial guardian.

Policy implications

The recommended revisions promote several Judicial Council policy objectives. The revision of form JV-350 modernizes a legally obsolete, yet mandated, form. Revisions to both forms promote access to the courts by explaining court processes to lay persons before those persons go to court, reducing the length of hearings. This function of the forms also improves the quality of justice and service to the public by informing guardians of their rights and duties and enables juvenile courts to dispose of cases effectively and efficiently.

Comments

This recommendation was circulated for public comment to the regular list of persons interested in family and juvenile law proposals twice: first, from April 9 to June 8, 2018, as part of the regular spring comment cycle; and second, from December 11, 2018, to February 12, 2019, as part of the winter comment cycle. One superior court judge and ten organizations, including five courts and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, submitted comments in spring 2018. Four of these commenters agreed with the proposal as circulated, and seven agreed and suggested further modifications to the forms.[6] The winter 2019 circulation also elicited 11 comments, including one from a superior court judge, three from courts, and two from attorneys.[7] Eight of these commenters agreed with the proposal and suggested further revisions. Two commenters indicated no position and suggested revisions. One commenter disagreed with the proposal. Most comments received in both cycles suggested revisions to the wording of specific information in the forms. The committee largely accommodated those suggestions.

Several commenters expressed confusion regarding references to the Probate Code or forms adopted or approved for use in probate guardianship proceedings. The discussion of the revisions

[5] In addition, the revisions to form JV-350-INFO would partly fulfill the council's commitment to the state Department of Social Services to promoting case closure by providing information to attorneys and judges about the funding available to guardians after juvenile court jurisdiction is terminated.

[6] A chart with the full text of the comments received in spring 2018 with the committee's responses is attached at pages 14–26.

[7] A chart with the full text of the comments received in winter 2019 with the committee's responses is attached at pages 27–48.

to form JV-330 at pages two to three, above, explains why specific provisions of the Probate Code apply to juvenile court guardianships. To reduce confusion, the committee has narrowed the references to the Probate Code to those provisions directly applicable to guardianships of the person. It has also replaced references to probate forms with references to form JV-180, *Request to Change Court Order* and form JV-350-INFO, *Becoming a Child's Guardian in Juvenile Court.* The latter form outlines the rights and duties of a guardian without referring to duties or procedures that apply only to a probate guardian.

One court suggested developing a standalone form for the juvenile court to use to appoint a guardian. Although this suggestion may have merit, it is outside the scope of this proposal. The juvenile court may currently use forms JV-415 and JV-418 to appoint a guardian for a child as part of its disposition order or use form JV-320 to appoint a guardian as part of its order after the section and implementation hearing.

Another court expressed concern that the revisions to form JV-330 would require county counsel to prepare letters of guardianship before the appointment hearing rather than several weeks after the hearing. The committee does intend that the letters of guardianship should issue as soon as possible after the order of appointment, as the guardian has no evidence of authority without them. A delay of any length would impair the guardian's ability to perform the duties required by law for the protection of the child's well-being.

This court also expressed concern that moving the guardian's affirmation to the first page of the letters and adding "Witness" to describe the function of the first seal and clerk's signature block would impose a new requirement that the prospective guardian appear at the appointment hearing. The committee does not intend these revisions to impose a new legal requirement. It has changed "Witnessed" to "Issued" to accommodate a broader range of clerical duties, but nevertheless believes that requiring the guardian to appear at the appointment hearing and affirm acceptance of the duties of the office is appropriate and consistent with existing law.

Several commenters offered suggestions for improving the accuracy and clarity of the discussion of financial support on page 5 of form JV-350-INFO. The committee accepted most of these suggestions but, to the extent some suggestions conflicted with others, chose to incorporate those that conformed to its best understanding of the law.

The commenter who disagreed with the proposal objected to the application of the Probate Code to juvenile court guardianships. It appears that this commenter was focused on the requirements for eligibility for federal and state funding. He is quite right that the Probate Code does not impose requirements that affect that eligibility. The Probate Code does, however, impose requirements on the administration and execution of a guardianship of the person that apply whether the guardian is appointed by the juvenile court or the probate court. The committee has tried to explain the operative differences in its responses to specific comments.

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 extensive reformatting of the information form and additional legal analysis, however, the committee determined that the scope of the changes made after comment was sufficient to warrant recirculation for a second round of public comment.

The committee also considered adding substantially more detail to the information form, but decided that the recommended level of detail, accompanied by suitable advisements to contact a social worker or lawyer for more information, was appropriate in a form directed to prospective guardians unlikely to have independent legal representation. A fairly high level of generality is also likely to reduce the frequency of revisions needed to conform to changes to the law.

Fiscal and Operational Impacts

The proposal would require courts to produce 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.* Because that form should be printed and issued on a case-by-case basis, however, courts would not need to replace unused inventory. The revised form is also the same length as the existing form, so no additional printing costs are likely to be incurred. Courts would probably incur some costs integrating the new elements of the revised letters into their electronic case management systems. On the other hand, the revisions to both forms should make appointment process and the rights and duties more understandable to guardians and prospective guardians from the outset, reducing the time and cost of the appointment process, the number of modification petitions filed, and the number of failed guardianships for courts, justice partners, and attorneys.

Attachments and Links

1. Forms JV-330 and JV-350-INFO, at pages 7–13
2. Chart of spring 2018 comments and committee responses, at pages 14–26
3. Chart of winter 2019 comments and committee responses, at pages 27–48
3. Link A: Gov. Code, § 68511.1, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=68511.1
4. Link B: Sen. Bill 438, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB438

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		
LETTERS OF GUARDIANSHIP (JUVENILE)		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

LETTERS

1. *(Name):* _____ is appointed guardian of the PERSON of *(child's name):* _____ *(date of birth):* _____ with powers to make decisions about, and duties to provide for, the child's care, custody, control, education, residence, and medical treatment as set forth in sections 2351(a), 2352, and 2353 of the Probate Code, subject to any limits or conditions in 2.
2. ☐ Other powers granted or conditions imposed *(specify):*

   ☐ continued on Attachment 2.

AFFIRMATION

3. **I solemnly affirm** (promise) that I will perform the duties of a guardian of the person as required by law. I have received and had a chance to read a copy of *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO).

   Signed on *(date):* _____ at *(place):* _____ , California.

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF APPOINTED GUARDIAN)

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:

IMPORTANT NOTICE
TO GUARDIAN OF CHILD

This form, called *Letters of Guardianship,* is evidence of your appointment as guardian of the child. The *Letters of Guardianship* stay in effect until the guardianship ends or new *Letters of Guardianship* are issued. 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 and authority to school personnel, medical personnel, and other service providers, you will need to show them a certified copy of this form. Be sure to keep this form in a safe place. If you misplace this 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 of Guardianship* issued to the person named on page one have not been modified, 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 a foster parent, a guardian, and an adoptive parent; and
- A guardian's legal rights, duties, and eligibility for financial help.

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 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; and
- Be approved by the county child welfare agency or juvenile probation department.

3 Can a relative be appointed guardian?

Yes. The juvenile court can appoint any approved adult, including any 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. They will try to find a relative to care for the child. If they can't find a relative, they will look for a nonrelative to care for the child. The initial caregiver often becomes a foster parent if approved as a resource family.

If you want to be a child's foster parent, tell the social worker or probation officer right away. Ask how you can get approved as a resource family. A foster parent is often appointed as guardian. Waiting too long can prevent the child from ever being placed with you.

6 Is a foster parent the same as a guardian?

No. A foster parent is *not* a guardian, but the court can and often will appoint a foster parent as a guardian. Foster parents have legal rights, including:

- The right to receive notice of the child's court hearings and go to the hearings; and
- The right to give the court information about the child's needs.

7 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 toward the child, but may receive fewer services and less personal support.

8 Who else can be involved in the child's court case?

The child's relatives. If you are a relative, even if not the child's foster parent or caregiver, you can still give the court important information in writing.

9 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 will not be able to 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.

10 Is guardianship a permanent plan?

Yes. A guardianship is one of three authorized permanent plans. It is intended to last until the child turns 18 years of age. If the child cannot return home, adoption is the preferred permanent plan because it is more stable and secure. (Later, this form talks more about adoption.) But if adoption is not a legally available option, the court will try to appoint a guardian for the child.

HOW CAN I BECOME THE CHILD'S GUARDIAN?

11 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 right away; and
- Ask the judge at a hearing as soon as you can.

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:

- The situation has changed since appointment; and
- It is in the child's best interests to end it.

12 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, your home, and everyone living there 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 you are not recommended 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.

13 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.

14 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). That form is proof that you are the child's guardian. Make copies of this form and keep the certified copy in a safe place.

Take a copy of the form 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.

15 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.

Note: Even after the juvenile case is closed, anyone, *including you,* can use *Request to Change a Court Order* (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 the child. If you're not related to the child, a social worker will visit you every six months and update a voluntary case plan. If you don't do what the case plan says, they might ask the court to order you to do it.

16 When will the guardianship end?

A guardianship lasts until the child turns 18 unless:

- The child dies before then;
- The child is adopted (by you or another adult); or
- The child is emancipated (or freed from your control) by getting married, entering active military duty, or getting a court order.

The court can order a guardianship to end before the child turns 18, but only if the proposed alternative is in the child's best interests; that is, it would be *better for the child* than continuing the guardianship.

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 about financial support generally.

17 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 replace you only if the situation has changed and it is in the child's best interests.

18 How is guardianship different from adoption?

Both a guardian and an adoptive parent have legal and physical custody of the child in place of the birth parents. 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 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.

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 and the adoptive parents agree that they can have contact after the 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 if that is in the child's best interests.) An adoption is intended to last forever. A court can end an adoption only 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 inherit property from a parent if the parent dies without a will. If the court knows the child might inherit property, it may appoint a "guardian of the estate" to manage the property. An adopted child usually has no right to inherit from a birth parent, but may receive a gift from a birth parent's will or trust.

WHAT ARE A GUARDIAN'S RIGHTS & DUTIES?

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:

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 active duty, the guardianship will end.

25 Give consent for the child's driver's license

The child cannot get a driver's license without your written permission. (See your duties described 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 duty, 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 can 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 may need to pay.

Negligent conduct. You can be made to pay for harm caused by the child's negligent conduct. If you're concerned about this duty, 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.

WHAT FINANCIAL HELP CAN I RECEIVE?

You may be able to get financial help from the county, state, or federal government. The type of help depends on the child's eligibility and their 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.

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 child has lived with you for at least six months after resource family approval, you sign a written agreement, and the court dismisses the case, you can qualify for KinGAP payments. KinGAP gives you the same monthly payments as a foster parent caring for a foster child, including any rate the county might pay to care for the child's special needs.

  You can receive KinGAP in any county or state, but the amount may change based on where you live. In California, the payments are the same amount as foster care payments.
- **Approved Relative Caregiver (ARC) or foster care program:** If the court keeps the juvenile case open after appointing you guardian, you can receive ARC or foster care payments instead of KinGAP.
- **CalWORKS (cash assistance):** In very rare situations, you may not qualify for KinGAP, foster care, or ARC payments. In those cases, you may still qualify for CalWORKS payments. If you have a low income, you may get a full CalWORKS grant. If your income is too high to qualify for a full grant, you may still receive a "child-only" CalWORKS grant.
- **Health care:** Children who qualify for KinGAP can get health care through Medi-Cal.
- **Independent living program (ILP):** Beginning at age 16, most children can receive ILP funds 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 are eligible for foster care payments from the state. You can receive these payments in any county or state, but the amount may change based on where you live. Before you move, ask if the rate will change! If you receive these payments, a case worker will visit you every six months.

- **Health care:** Children who qualify for foster care payments can get health care through Medi-Cal.
- **Independent living program (ILP):** Beginning at age 16, most children can receive ILP funds and services to help them become successful adults.

If you keep supporting the child after age 18

Payments can continue after the child turns 18 if you continue to care for and support the youth, the youth meets all other eligibility requirements, and you both sign written agreements.

Generally, KinGAP payments end when a child turns 18, unless the payments started after the child turned 16 (they continue until age 21) OR the child has a mental or physical disability (funding continues until 21) OR the child is in high school (funding continues until 19 or graduation).

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 *[List local agencies and their contact information]:*

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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	Will this pamphlet be translated in other languages, e.g., Spanish? Can it be available in electronic form for dissemination? 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. '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.	Yes, the committee intends for the form to be translated into Spanish. 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. 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. 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

	Commentator	Position	Comment	Committee Response
				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.
			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.	The committee agrees and has added information about benefits available to nonminor former dependents and wards living with former guardians.
			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.	The committee has revised this sentence to remove the distinction.
			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.	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

	Commentator	Position	Comment	Committee Response
				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, *Duties of Guardian,* 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.
			Remove 'for developmentally disabled children' to be inclusive of regional center services such as Early Start for children with developmental *delay*.	The committee has replaced "for developmentally disabled children" with "developmental delays or disabilities."
			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.	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.
			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.	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.

	Commentator	Position	Comment	Committee Response
			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.	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.
			You may want to add how to obtain the services and whom to contact.	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.
			Related guardianships are not eligible for transitional housing services if less than 16 years when entered KinGAP.	See the committee's response to this commentator's last comment, below.
			In some situations, they may receive both, or Social Security/SSI may be the first option.	See the committee's response to this commentator's last comment, below.
			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,	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

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	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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	Commentator	Position	Comment	Committee Response
			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.	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.
			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.	The committee has revised these headings to make them easier to understand.
			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."	The committee has addressed this concern through the reformatting process.
			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.	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."

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			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." 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.	The committee understands section 10609.45(b) to restrict eligibility for ILP services to children whose guardianships were ordered after their *eighth* birthdays. Section 10609.45(a) appears to include additional restrictions on eligibility. The committee has modified its recommendation to indicate that *most* children in nonrelative guardianships can receive ILP funding and services.
5.	Orange County Bar Association Newport Beach by Nikki P. Miliband, President	AM	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. 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	The committee appreciates the bar association's comments. The committee has revised the language of the notice to avoid this possible confusion.

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

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Juvenile Law: Guardianship Information (revise forms JV-330 and JV-350)

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	Commentator	Position	Comment	Committee Response
			ended "by you or by another person." 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.	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.
6.	Superior Court of Los Angeles County (no name provided)	AM	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.	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, *Findings and Orders After Dispositional Hearing,* and form JV-418, *Dispositional Attachment: Appointment of Guardian,* to appoint a guardian under Welfare and Institutions Code section 360(a). The court must use form JV-320, *Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31,* 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.
7.	Superior Court of Orange County (no name provided)	A	*Does the proposal appropriately address the stated purpose?* Yes, it also informs a party in lay terms of their	The committee appreciates the court's comments. No specific response is required.

	Commentator	Position	Comment	Committee Response
			rights and responsibilities. *Would proposal provide cost savings?* 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. *What would the implementation requirements be for courts?* 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. No additional comments.	No specific response is required. No specific response is required. No response is required.
8.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	*Does the proposal appropriately address the stated purpose?* Yes. *Would the proposal provide cost savings?* No. *What would the implementation requirements be for courts?* 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.	The committee appreciates the court's comments. No specific response is required. No specific response is required. No specific response is required.

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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
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No specific response is required.
			How well would this proposal work in courts of different sizes? The proposal should work well for courts of any size.	No specific response is required.
9.	Superior Court of San Bernardino County (no name provided)	AM	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.	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 (*Duties of Guardian*) 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.
			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."	See response above.
			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	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

	Commentator	Position	Comment	Committee Response
			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. 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. • 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.	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. The committee has revised the forms to remove references to forms GC-079, GC-080, and GC-085. Form JV-180 provides space to include all necessary information. If guardians do not provide the necessary information on form JV-180, and time and resources permit, the committee may consider developing attachments that directly solicit that information.
10.	Superior Court of San Diego County	AM	*Q: Does the proposal appropriately address the*	The committee appreciates the court's comments.

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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
	by Mike Roddy, Executive Officer		*stated purpose?* A: Yes. Should have a form number on it.	The revised form is numbered JV-350-INFO.
			Q: Would the proposal provide cost savings? A: Unknown.	No specific response is required.
			Q: What would the implementation requirements be for courts? A: Replacing old versions of the Guardianship Pamphlet and training staff to use the new version.	No specific response is required.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.	No specific response is required.
			Q: How well would this proposal work in courts of different sizes? A: It should work well no matter what the size of the court.	No specific response is required.
			General Comments: **Form JV-330** *Add reference to Probate Code sections 2351–2358 to the footer.	The committee agrees and has added the suggested reference to form JV-330.
			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.	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."

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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 recognize that persons may identify as male, female, or nonbinary. The committee has attempted to replace gendered pronouns with gender-neutral nouns as needed.
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.

W19-07

Juvenile Law: Guardianship Information (revise form JV-330; revise form JV-350 and renumber as JV-350-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Alliance for Children's Rights by Kristin Power Senior Policy Associate Los Angeles	AM	The Alliance for Children's Rights appreciates the opportunity to comment on proposed revisions to forms JV-330 Letters of Guardianship (Juvenile) and JV-350 Guardianship Pamphlet (Juvenile) to promote better understanding of the process of appointing a guardian in a juvenile court proceeding, the court's role in overseeing the guardianship, and the duties of a guardian. We wholeheartedly agree that better-informed guardians will reduce the need for court intervention after appointment and further believe that better-informed guardians will result in improved support of the children and youth in their care. Our experience representing caregivers provides a breadth of information on the knowledge caregivers would find most useful in understanding the court processes and their duties. We offer these comments to further the intention to "fulfill the statutory mandate to use 'language easily understood by a lay person not trained in law.' (*Ibid.*)" **JV-330** * We suggest changing "Case Name" in the caption block to "Guardianship of the Person of …" to clarify that the guardianship is of the person (or the estate, if applicable).	The committee appreciates the Alliance's comments. Please see below for responses to specific issues. The caption refers to the name and number of the proceeding filed in the juvenile court. Because the letters are issued and filed in the juvenile court proceeding, and the guardianship remains under juvenile court jurisdiction even if the underlying juvenile court proceeding is dismissed, the committee does not recommend changing the caption of the form. The committee has added language to the form to clarify the scope of the

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

	Commenter	Position	Comment	Committee Response
				appointment.
			Recommend that form JV-350-INFO be provided to guardians in lieu of form GC-248. Some items on form GC-248 are not relevant to dependency court guardians and may cause confusion. For example, Page 2, item g. of form GC-248 discusses financial support options, such as TANF, but most dependency court guardians will receive Kin-GAP and are not eligible for TANF. There is also a guardianship of the estate section that is irrelevant if the dependency court does not have jurisdiction to grant guardianship of the estate. Finally, the last page on form GC-248 contains signature blocks which may give the guardian the false impression that they must sign and file the form with the court.	The committee agrees with this suggestion and has revised its recommendation accordingly.
			An alternative would be to copy the relevant information from form GC-248 to form JV-350-INFO and have the guardian acknowledge receipt of JV-350 instead. Most of the duties of a guardian listed in GC-248 already mirror those listed under the Guardian's Rights and Responsibilities section of form JV-350-INFO.	The committee has chosen the first suggested alternative and does not therefore recommend this one.
			JV-350-INFO [Comments were submitted on the face of the circulated form. Comments that might not be understandable if reported verbatim are expanded with added text in brackets.]	
			Recommend reordering the information [on the form] to provide greater clarity [by placing it in rough chronological order.]	The committee agrees with this suggestion to some extent, but has not recommended reordering most questions on the form. For example, the committee has not recommended moving the first three questions to later in the form. The committee believes that the form will often be used by persons unfamiliar with the role and

	Commenter	Position	Comment	Committee Response
				responsibilities of a guardian, including persons whose first contact with the idea will be a suggestion by a child's attorney or social worker. Those persons will benefit from the placement of general information about guardianship at the beginning of the form where it is easy to find.
			There are certain things that guardians have to get approval or consent to or to do - specifically residence. We question the use of the word "same" [in the answer to "What Is a Guardian?"]	The committee agrees with the suggestion and has removed the term "same" from its recommendation.
			After ["Are resource families/foster parents the same as guardians?"] we recommend adding a question: "What is a resource family?" Resource Family Approval is the process through which caregivers (related and non-related) of children in foster care are approved and prepared to parent vulnerable children, whether temporarily or permanently. Resource family may be used interchangeably with foster parent.	The committee has chosen not to use "resource family" interchangeably with "foster parent." It believes that usage would lead to confusion among caregivers. Foster parent is the colloquial term used to describe the caregiving relationship at issue. The committee has revised the form to emphasize the importance of asking the social worker about starting the resource family approval process as soon as possible.
			Recommend moving ["If the child cannot live safely at home, what happens?"] to become the first or second question.	This question is currently the second question following the three introductory questions and the question about the beginning of a juvenile court case. The committee does not recommend moving it earlier in the form.
			Recommend deleting [language in the first paragraph of question 5 implying that a relative must be approved as a resource family when they are identified as a potential placement.] The relative does not have to be approved as a resource family at the time that they are identified as a potential placement.	The committee agrees and has modified the language to remove the implication that the caregiver must be approved before serving as an emergency placement while continuing to emphasize the importance of starting the resource family approval process as soon as possible.
			Recommend [consistently using the term resource family when foster parent is used.] It	The committee agrees in part with the suggestion and has added a reference to "resource family"

	Commenter	Position	Comment	Committee Response
			may be confusing to sometimes use the term "foster parent" and other times use the term "resource family."	near the beginning of the form. The committee has not, however, added references to a resource family every time the form refers to a foster parent. The committee believes that the critical information—about the need for a foster parent to be approved as a resource family—is properly conveyed in the second paragraph of question five. Excessive use of the technical term might mislead persons seeking placement of a child into thinking they needed to go through multiple separate approval processes.
			Recommend moving information [in question 18 about the differences between a guardian and a resource family/foster parent] earlier in the document with the other introductory questions.	The committee agrees with this suggestion and has moved the question about the differences between a guardian and a foster parent to follow the question about whether the two are the same.
			Recommend deleting this language [from page 4 under Financial Help: "Be sure to ask whether you qualify as a relative. The law treats more people as relatives than you might think!] 1) It incorrectly puts the onus on caregivers to ask the county to clarify relative status, and 2) There is no financial advantage to legal guardians to be classified as relatives under California law.	The committee agrees with the suggestion and has revised its recommendation accordingly.
			Recommend adding language on page 4 to clarify the benefits and applicability of the KinGAP, ARC or Foster Care, and CalWORKS programs, including the rarity in which a child will not be eligible for KinGAP or Foster Care payments.	The committee agrees with this suggestion and has modified its recommendation accordingly.
			Recommend adding language [on page 5] to make clear that KinGAP ineligibility is rare and that it is imperative for caseworkers and courts to collaborate to ensure applicable higher levels of funding are identified, as appropriate.	The committee agrees and has modified its recommendation to add the language suggested on page 5 of the form.
			Recommend deleting this sentence [from page	The committee agrees and has deleted the

	Commenter	Position	Comment	Committee Response
			5]: "However, if the child moves to another state, those payments will end. The other state might not offer the same payments." We are unable to identify the statute that supports the conclusion that funding for a non-relative legal guardian terminates when the child moves out of state. See WIC 11401 and WIC 11405.	language as suggested.
			Furthermore, a non-related legal guardian is entitled to receive state foster care funding until the youth turns 21, regardless of when the guardianship occurred, as long as the youth remains in the guardian's care. The County may change the source of funding for the youth from KinGAP to AFDC to ensure continued eligibility for funding until the age of 21.	The committee agrees that an eligible youth is entitled to receive state foster care funding until the youth turns 21 as long as the youth remains in the guardian's care. The committee has revised the form to reflect this entitlement.
			In addition to the revisions noted on the attached, we further request that Judicial Council of California undertake a revision of the probate guardianship pamphlet (GC-205), last revised in 2001. Critical information regarding the differences between probate and dependency should be addressed and the probate guardianship pamphlet is an ideal vehicle for such information. We welcome the opportunity to participate in such an update and provided recommended edits for your consideration on the attached.	This suggestion is beyond the scope of both the proposal and this committee's charge. The committee has forwarded the suggestion to the Probate and Mental Health Advisory Committee for its consideration.
2.	Hon. Tari L. Cody Judge Superior Court of Ventura County	AM	I would re-word paragraph 25 on the proposed JV-350-INFO. As it reads it seems to require that a guardian "must" give his/her permission i.e., they have no choice. Instead I propose it be worded the same as it is stated in paragraph 26: The child cannot get a license without your written permission.	The committee agrees with the suggestion and has revised its recommendation to reflect
3.	Maria P. Diaz, Esq. Conflict Attorney	NI	It would be helpful to <u>add</u> a Note section to **JV-350-INFO, section 16** as follows: A *Request to*	The committee agrees and has separated the advisement about using form JV-180 as a note on

	Commenter	Position	Comment	Committee Response
	Children's Legal Services of San Diego		*Change a Court Order* (JV-180) must be filed with the juvenile court to change any court orders in the legal guardianship.	page 3 of the form.
4.	Executive Committee of the Family Law Section, California Lawyers Association by John Nieman, Dependency Counsel Saul Bercovitch, Director of Governmental Affairs	AM	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) agrees in general with the proposed revisions to the two Judicial Council forms, but has some suggested revisions, as discussed below. **JV-330** 1. The new form includes a reference to the Probate Code that is generally applicable to both guardianships *and conservatorships*. However, since JV-330 is exclusively related to guardianships made out of the Juvenile Court, we do not believe it should make a reference as it does in "1" on page 1 to Probate Code sections 2351-8. Instead it should reference only the applicable code sections: 2351, 2352, 2353, 2356, 2357, and 2358. This would make the form more accurate and simpler. Notably, were a nonlawyer to read the code, section 2351 talks about "guardian or conservator" and "ward or conservatee" and does not indicate that they are different entities, potentially inviting the person to mistakenly think the terms are merely interchangeable. We suggest that this same change be made to the fine reference print at the bottom of the first page on the right side of the form. 2. The advisory box on page 2 initially and correctly refers to itself as "*Letters of Guardianship*" but then goes on to shorten this to "*Letters*". We are concerned that a nonlawyer might think that "*Letters*" is something different. In addition, the advisory box, which is headed with "IMPORTANT NOTICE," arguably has four different names: "*Letters of*	The committee appreciates FLEXCOM's comments. Please see below for responses to specific issues. The committee agrees and has modified its recommendation to indicate that appointment as guardian confers only the powers and duties in sections 2351(a) (care, custody, and control), 2352 (residence), and 2353 (medical care and treatment). The committee has decided not to refer to sections 2356, 2357, and 2358, which do not, by themselves, confer any powers or duties. Section 2356 sets limits on the forms of medical treatment a guardian may authorize under division 4 of the Probate Code. Sections 2357 and 2358 require further court order to grant additional powers. In a juvenile court guardianship, the guardian may file form JV-180 to request modification of the powers and duties ordered by the court on appointment. The committee agrees and has modified its recommendation accordingly.

	Commenter	Position	Comment	Committee Response
			Guardianship"; "*Letters*"; "the form"; and "this form". We recommend that "*Letters of Guardianship*" replace "*Letters*" and "this form" replace the instance of "the form." Alternatively, there are places where "*Letters*" could as well be replaced with "this form" instead of "*Letters of Guardianship*," which is certainly clear and shorter than "*Letters of Guardianship*.". Ideally, as well, "*Letters of Guardianship*" should replace "*Letters*" in the CERTIFICATION section on page 2. **JV-350-INFO** Our comments on the numbered statements are set forth below. <u>No. 5</u> Welfare and Institutions Code section 360(a) allows the Juvenile Court to place a child in a guardianship "in lieu of adjudging the child a dependent…" In light of that, we believe No. 5 should be modified to read as follows: "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~~ <u>care for the child</u>. If they can't find an approved relative, they will look for an approved nonrelative to ~~be the foster parent~~ <u>care for the child</u>. <u>Usually initial care providers become foster parents. Being a foster parent is one of the most common first steps to becoming a guardian.</u> 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."	The committee agrees generally with the suggestion and has modified its recommendation in response. See also the response to the comment by Alliance for Children's Rights, above.

	Commenter	Position	Comment	Committee Response
			We recognize that the last sentence in the first paragraph would makes part of No. 6 redundant but believe there is no harm in repeating that foster parents frequently become guardians. <u>No. 8</u> We suggest the following modification: "**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~~ <u>will not be able to</u> return home safely. If that happens, the court will deny or stop services for the parent." We understand that the difference between "cannot" and "will not be able to" may seem minor but believe there is a meaningful distinction in the context to No. 8. The word "cannot" speaks to an immediate circumstance, so if a court thought that a child cannot return home today, but could tomorrow, it probably would not deny or terminate services. In contrast, "will not be able to" speaks about the future, which is what the court is essentially saying when either a denial or termination of services is made. <u>No. 9</u> There are only two possible permanent plans that are "intended to last until the child turns 18," namely guardianship and adoption. We recommend that No. 9 make that clear, replacing the current "several" with "two."	The committee agrees and has modified its recommendation accordingly. Welfare and Institutions Code section 366.26(b)(6) authorizes the court to order "that the child be permanently placed with a fit and willing relative, subject to the periodic review of the juvenile court under section 366.3." Section 366.26(c)(4)(B)(i) further specifies the circumstances in which "the court shall order a permanent plan of placement with a fit and willing

	Commenter	Position	Comment	Committee Response
				relative." The committee therefore does not recommend the suggested change.
			No. 11 Paragraph B refers to a "report to the court." The Note then goes on to say: "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." FLEXCOM is concerned that this language suggests that the person seeking to become a child's guardian will have direct access to the content of the report to the court, notwithstanding Welfare and Institutions Code section 827. We therefore recommend that the Note be modified to read as follows: "If ~~the report does not recommend~~ you are not recommended 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."	The committee agrees with the suggestion and has modified its recommendation accordingly.
			No. 13 As in proposed JV-330, this form shortens "*Letters of Guardianship*" to "Letters" without qualification. We recommend that *Letters of Guardianship* be written out each time or that "it" be used after the initial reference to *Letters of Guardianship*.	The committee agrees and has modified its recommendation to replace "letters" with "this form" to avoid confusion.
			No. 17 The last sentence in the "Inheritance." section states: "An adopted child usually cannot inherit from a birth parent." As stated in the Form, the language is potentially confusing and overly broad because it relates only to intestate succession. We recommend that the sentence be modified to read as follows: "An adopted child usually cannot inherit from a birth parent if the	The committee recognizes that the distinction between an inheritance and a devise, though still material to issues in the law of estates, is no longer widely understood among members of the public and the legal profession, and has therefore modified its recommendation to indicate more clearly that that an adopted child usually has *no right* to inherit from a birth parent, but may

	Commenter	Position	Comment	Committee Response
			birth parent dies without a will or trust naming the adopted child."	receive a gift on the birth parent's death if named in the birth parent's will or testamentary trust.
			<u>No. 18</u> We recommend that the second sentence under "Duties" be modified to read as follows, as the categorical statement in the Form is overly broad: "A guardian has more rights and duties to the child, but receives may receive fewer services and less personal support."	The committee agrees with the suggestion and has modified its recommendation accordingly.
			<u>No. 20</u> We recommend modifying the first sentence, to read as follows: "You can allow (*consent to*) to most medical or dental treatment for the child."	The committee agrees with the suggestion and has modified its recommendation accordingly.
5.	Los Angeles Dependency Lawyers, Inc. by Dennis Smeal, Chair, Legislation Committee	AM	Los Angeles Dependency Lawyers, Inc. submits the following changes to the proposed JV-350.	The committee appreciates LADL's comments. See below for responses to specific issues.
			Section 5 – One of the biggest barriers to relative placement is the relative who thinks they can wait and see if the parents get their children back on their own, thinking there is plenty of time. We suggest "as soon as you can" be changed to "immediately" and that an additional sentence be added that "Waiting too long can prevent children from ever being placed with you."	The committee agrees with the suggestion and has modified its recommendation to reflect the urgency of See also the responses to comments on item 5 by the Alliance for Children's Rights and FLEXCOM, above.
			Section 9 – The current wording does not account for several common situations such as those contemplated by WIC §366.26(c)(1)(A), 366.26(c)(1)(B)(ii) etc. We suggest adding "or desirable" after "possible" to clarify this.	The committee understands that "possible" could be misunderstood as applying both factually and legally. The committee has therefore modified its recommendation to use the term "authorized" to describe the range of statutory permanent plans. No implication is intended that every permanent plan is legally or factually possible in every set of circumstances.
			Section 10 – Cases where relatives have delayed beginning the process to become legal guardians can be heartbreaking. The message that time is	The committee agrees with the suggestion and has modified its recommendation to convey the suggested message.

	Commenter	Position	Comment	Committee Response
			of the essence cannot be overemphasized. We suggest changing "Tell the social worker or probation officer;" to "Immediately tell the social worker or probation officer;" and "Ask in the courtroom at a hearing" to "Ask in the courtroom at the first opportunity."	
			Section 10 – The current wording misstates WIC §388 and case law based thereon. The standard for modification of Juvenile Court judgments and orders is "changed circumstances" and we ask that "Something really important has changed;" be amended to read "Something has changed;" or "Circumstances have changed;" This comports with section 16 which accurately states the requirements for a 388.	The committee agrees and has modified its recommendation to accommodate this concern.
			Section 11 – A common barrier to placement arises due to friends or relatives in the home. A minor amendment would give readers of this pamphlet notice of this potentially troubling area. We suggest changing 11A to read "The social worker or probation officer will interview you and visit your home to make sure you, your home and all who live there are considered safe for the child."	The committee agrees and has modified its recommendation reflect this concern.
			Section 17 – The paragraph that begins with "Important!" presents the same difficulty as the similar discussion in Section 9, addressed above. We suggest these three lines be omitted. If they are retained, we propose that WIC §366.26 would be more accurately stated if these lines were amended to read "In some circumstances, if guardianship and adoption are both possible, the law prefers adoption because it is more stable."	The committee agrees that restatement of this language is not needed and has removed it.
6.	Orange County Children and Family Services	N	Orange County would like to offer the following comments regarding the Judicial Council	The committee appreciates the comments from Orange County CFS. Please see below for

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	by Chuck Griffin, Policy Analyst		Invitation to Comment W19-07, Juvenile Law, Guardianship Information. **Use of the Probate Code** In a response by the Judicial Council to prior comments, WIC § 366.4 was stated as the basis for using the Probate Code. WIC § 366.4 Subsection (a) states: "(a) Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanency plan pursuant to Section 366.26, or for whom a related guardianship has been established pursuant to Section 360, or, on and after the date that the director executes a declaration pursuant to Section 11217, a nonminor who is receiving Kin-GAP payments pursuant to Section 11363 or 11386, or, on or after January 1, 2012, a nonminor former dependent child of the juvenile court who is receiving AFDC-FC benefits pursuant to Section 11405, is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations." The first paragraph references Kin-GAP and Extended Kin-GAP Guardianships. (underline is my emphasis) The second paragraph states that the Probate Code, commencing with Section 1500 does not apply.	responses to specific issues. Welfare and Institutions Code section 366.4 exempts minor children in juvenile court guardianships from the application of part 2—that is, sections 1500–1611—of division 4 of the Probate Code. This exemption is appropriate because those sections of the Probate Code govern the establishment and termination of probate guardianships. The Welfare and Institutions Code provides separate procedures for establishing and terminating guardianships in juvenile court. Those procedures are primarily set forth in sections 360, 366.26, 366.3, 366.4, and 728. Yet the need to rely on the Probate Code for certain aspects of the operation of the guardianship remains. The Welfare and Institutions Code does not define a guardianships, specify a guardian's powers and duties, or provide a detailed mechanism for the court to administer a guardianship. Reliance on part 4 of division 4 of the Probate Code, as invited by Welfare and Institutions Code section 366.4, fills those gaps without requiring restatement. For example, section 366.26(b)(1) & (3) and (d) require that "letters of guardianship" issue. The Welfare and Institutions Code does not otherwise discuss letters of guardianship. The description of those letters, both their form and function, is found in section 2310 and 2311 of the Probate Code.

	Commenter	Position	Comment	Committee Response
			The third paragraph states that the Probate Code only applies as it relates to the administration of estates, so far as they are applicable. My understanding is that this might be used in situations where the minor has a property interest. Subsection (b) states: (b) Nonrelated legal guardians of the person of a guardianship pursuant to Section 360 or 366.26 shall be exempt from the provisions of Sections 2850 and 2851 of the Probate Code. Again, the Probate Code is excluded. **Changes to JV-330 Letters of Guardianship** Item 1. As stated previously, I don't believe that the Probate Code is appropriate to Juvenile Court (Kin-GAP and Nonrelated Legal Guardianship) Guardianships Item 3. Providing the guardian with this Duties of Guardian (form GC-248) would be very confusing. See review of form below. Notice Box. It states that the guardian must file a JV-180 if planning to move out of state [which] is incorrect if it's a Kin-GAP guardianship. They may move without notification to the Court.	Sections 2850 and 2851 of the Probate Code which established a statewide registry of professional fiduciaries, were repealed by AB 1550 (Stats. 2006, ch. 491). These sections never applied to private nonprofessional guardians and no longer apply to anyone. The exemption of guardians from their application does not seem to mean anything. See responses above. The committee believes that the appropriate question is not whether the Probate Code applies to juvenile court guardianships, but rather which provisions apply and how they apply. In this respect, the commenter makes valuable points. The committee agrees that GC-248 includes too much information that does not apply to juvenile court guardianships too be useful. The committee instead recommends requiring that every appointed guardian be given a copy of form JV-350-INFO, which specifies the rights and duties of a guardian appointed by the juvenile court. Although the guardian may not need to notify the court of a change to the child's residence to maintain eligibility for funding, the guardian must notify the court (in-state) or request court approval (out-of-state) to allow the court to oversee the guardianship and monitor the safety and welfare of the child.

	Commenter	Position	Comment	Committee Response
			Duties of Guardian (form GC-248) This introductory section tells the prospective guardian they are an "officer of the court". This will have little meaning to them. It also states that they will receive Guardianship Pamphlet (for Guardianships of Children in Probate Court) (Form GC-205) which is incorrect since they will receive Guardianship Pamphlet JV-350-INFO which is specific to Juvenile Court. 1. GUARDIANSHIP OF THE PERSON d. Residence The first paragraph indicates that the child is not required to always live with the guardian who is allowed to make other arrangements if in the best interest of the child. Both Kin-GAP and AFDC funding require the child to live in the approved home of the guardian. The only exception would be if a child was able to attend college while still a minor in which case they would be allowed to live in a dorm. The second paragraph indicates that the guardian cannot leave the state without notifying Court and then if they do receive permission, they must re-establish the guardianship in the other state. This is not true for Kin-GAP which allows the guardian to relocate within the U.S. f. Financial Support. The statement that the guardian may take action to obtain child support is incorrect. At the time that the guardianship is created, the assigned social worker must determine if it's appropriate to make a referral to Child Support Services or if action should be deferred. The information regarding the availability of funding isn't very accurate as the primary sources of funds are AFDC and Kin-GAP. Only a small number of cases remain TANF There are not really Indian Child Welfare benefits per	Given the committee's decision to replace the requirement to provide form GC-248 with provision of form JV-350-INFO, no further response to comments about the application of form GC-248 to juvenile court guardianships is required.

	Commenter	Position	Comment	Committee Response
			se though tribal membership may provide some benefit to the child. h. Visitation Details regarding proposed visitation are provided on JV-400 m. Court visitors and status reports. Does not apply 2. GUARDIANSHIP OF THE ESTATE Doesn't apply 3.OTHER GENERAL INFORMATION b. Legal Documents. My understanding is that we do not use Order Appointing Guardian of the Minor (GC-240). Other comments regarding use of Duties of Guardian (form GC-248). Presently, the process used to create a Kin-GAP guardianship utilizes Agency-Relative Guardianship Disclosure (SOC 369) and Guardianship Pamphlet (JV-350). This process was developed by the state. In tandem, these documents provide an accurate description of the roles, responsibilities, financial benefits and other miscellaneous issues involving a Kin-GAP guardianship. They are tailored to Juvenile Dependency and therefore less confusing than the GC-248. For Non-Related Legal Guardianships, the prospective guardian is provided the Guardianship Pamphlet (JV-350). Funding in the form of AFDC continues at its dependency level. In contrast to Kin-GAP where contact with the agency ceases, AFDC requires that we have face to face contact with the legal guardian every six months. At this point of contact, questions regarding responsibilities and services available can be addressed. Based on the above, it would be problematic to just hand the Duties of Guardian (form GC-248) to the guardian without some follow-up. Having the social worker engage in this task places	

	Commenter	Position	Comment	Committee Response
			another burden on the worker plus training regarding how to interpret the form would be required. **JV-350 INFO Comments** Page [2], # 11, B It states that the guardian should ask the social worker if they will name them as a successor guardian. The social worker's permission isn't required. Presently, the prospective guardian can indicate a successor guardian when signing the Kinship Guardianship Assistance Payment (Kin-GAP) Program Agreement Amendment (SOC 369A) which is then submitted to Court. Successor Guardian (Fed-GAP) and Alternate/Co-Guardian are described in WIC §§ 11386(i) and 11363(e), respectively. Page 3, #18, Court Supervision Though technically not Court Supervision, for Nonrelated legal guardianships, the social worker is required to make a visit to the guardian and child every six months in addition to updating a voluntary case plan. This occurs post termination and is a requirement of AFDC funding (WIC § 11405) Page 4, #19 The requirement of notifying Court when the guardian moves out of state is not applicable to Kin-GAP guardianships (WIC § 11364 &11387)	The committee believes that the advice in item 11B is an accurate statement of the law. SB 438 (Stats. 2017, ch. 307) amended section 366.26(d) to provide that the assessment of a prospective guardian prepared, for example, under section 361.5(g), "may also include the naming of a prospective successor guardian, if one is identified. In the event of the incapacity or death of the appointed guardian, the named successor guardian may be assessed and appointed pursuant to this section." The social worker or probation officer (under section 728(d), which incorporates section 366.26) is responsible for preparing the assessment and may name a successor guardian therein. The committee reads sections 11363(e) and 11386(i) to authorize naming an alternate or successor guardian if one has not already been named in the assessment, but not to authorize the prospective or appointed guardian unilaterally to name one. The committee understands that regular case worker visits are a condition of eligibility for receipt of AFDC funding. They are not, however, required as a condition of guardianship unless ordered by the court. The committee understands that the guardian may not need to notify the court of a change of the youth's residence to maintain eligibility for funding. The requirement is intended to allow the

	Commenter	Position	Comment	Committee Response
				court to oversee the guardianship and monitor the safety and welfare of the child.
			Page 5 Kin-GAP Program It's incorrect to state that you can qualify for Kin-GAP payments if the juvenile case is closed by signing a written agreement. This ignores the requirement that the child be placed with the relative in an approved home for six consecutive months prior to the establishment of the guardianship at a WIC § 366.26 or 360 hearing (WIC § 11363, 11386)	The committee agrees that the statement on the form was incomplete and has added the six-month residency requirement.
			Page 5 Approved Relative Caregiver (ARC) This is true since Kin-GAP payments don't begin until dependency is terminated. I'm not sure this should be considered a benefit since the goal is to terminate dependency upon creation of the guardianship. The necessity for ARC or Foster Care payments reflects that continued efforts are required to finalize the permanent plan. The review of these efforts occurs at the WIC § 366.3 hearing with the hope that dependency can now be terminated.	The committee agrees with the comment. No further response is required.
			Page 5 If the child is NOT Related to YOU Foster Care Payments As stated previously, AFDC funding requires that a social worker visit the guardian and child every six months (WIC§ 11405). Reassessment of the rate occurs every twelve months. (WIC §11401.5)	The committee agrees with the comment. No further response is required.
			Page 5 If the child keeps living with you after turning 18 The extension of benefits should read: Kin-GAP payments can continue after age 18 if the initial Kin-GAP payment began after age 16. (WIC §§ 11363, 11386) For nonrelated	The committee agrees that the language as circulated for comment is too vague, and has added references to some of the basic

	Commenter	Position	Comment	Committee Response
			guardians, payments may continue if the youth enters into a mutual agreement with the agency on their 18th birthday. (WIC § 11405) Comments regarding the JV-350 INFO We presently use the JV-350, and soon its successor JC-350 INFO, to provide the caregiver information regarding the permanency option of guardianship. The guardian also receives information that compares the various permanency options in terms of rights, responsibilities and financial benefits as required by statute (WIC §§ 11364, 11367). Internally, policies specific to the type of guardianship are used to guide social worker activity.	requirements for continued funding eligibility. The committee appreciates this comment. No further response is required.
7.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	AM	Include the words "and □ estate" in item 1 of JV-330 so that "estate" may be included (i.e., checked off) where applicable.	The committee does not recommend the suggested change. Under most circumstances, a guardian of the estate is not needed. If the child has or is likely to acquire—e.g., through inheritance, devise, or judgment—property, the social worker may recommend appointment of a guardian of the estate. In the even less likely event that the court appoints the caregiver as guardian of both the child's person and estate, the court can indicate the grant of estate powers in item 2.
8.	Karen Prosek, Esq., MSW, CWLS Firm 2 Supervising Attorney Children's Legal Services of San Diego	NI	It would be helpful to add the following information regarding Extended Foster Care funding to the **JV-350-INFO, page 5:** Relative guardianships established prior to age 16 do NOT qualify for funding past the youth's 18th birthday even if they meet Extended Foster Care criteria. However, those relative guardianships established AFTER age 16, can receive funding to continue to support the youth between ages 18 through 21 as long as the youth continues to meet the Extended Foster Care criteria.	The committee has revised the discussion of funding eligibility beyond a youth's 18th birthday to address these issues.
9.	Superior Court of Los Angeles County		**Form JV-350 Info** On page 1 of the form under the section "The	The committee has added language to the fourth

	Commenter	Position	Comment	Committee Response
			form explains:" an additional bullet should be added referencing eligibility for financial help and other benefits. This information is frequently requested. **Form JV-330 Letters of Guardianship** Item 3 This form now refers to form GC-248 Duties of Guardian. Although not specifically addressed by this proposal, it should be noted that form GC-248 references probate guardianship duties but makes no mention of the juvenile legal guardianship. GC-248 should be updated to include references for juvenile guardianship as well as probate. ***Does the proposal appropriately address the stated purpose?*** Yes, the proposal addresses the stated purpose. ***What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.*** Minimal operational impact including training and maintenance of forms.	bullet to refer to eligibility for financial help. The committee has revised its recommendation to require provision of form JV-350-INFO to the appointed guardian instead of form GC-248. No further response required. No further response required.
10.	Superior Court of Orange County	AM	***Letters of Guardianship (Juvenile) - JV-330*** Since one of the stated purposes for revising the form was to use language that is easily understood by a person not trained in law, the following recommendations are being made: ▪ On page 1, section 3, update the affirmation to read, "I promise that I will perform the duties of a guardian according to the law." Instead of, "I solemnly afford that I will perform the duties of a guarding according	The committee agrees that simpler language would be appropriate. Consistent with Code of Civil Procedure, section 2015.6, the committee has inserted "promise" in parentheses following the mandatory language "I solemnly affirm."

	Commenter	Position	Comment	Committee Response
			to the law." This language is consistent with recent revisions to other forms such as the *TR-320 – Can't Afford to Pay Fine: Traffic and Other Infractions*. ▪ Update the "Signature of Appointee" to "Signature of Appointed Guardian". ***Becoming a Child's Guardian in Juvenile Court*** No comments. ***Does the proposal appropriately address the stated purpose?*** Yes ***Would the proposal provide cost savings?*** No ***What would implementation requirements be for courts?*** The changes would be informational for staff and judges. Any pre-printed forms would need to be replaced. No changes would be needed to the case management system. ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes	The committee agrees with the suggestion and has modified its recommendation accordingly. No response required. No response required. No response required. No response required.
11.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	**FORM JV-330** **Page 1, item 3:** … I have received a copy of *Duties of Guardian (Probate)* (form GC-248). **FORM JV-350-INFO** **Page 3, item 15:** • The child is emancipated (or freed from your	The committee has revised its recommendation to require provision of form JV-350-INFO instead of form GC-248 to the appointed guardian. The committee agrees with the suggestion and has

	Commenter	Position	Comment	Committee Response
			control) by getting married, entering ~~on~~ active military duty, or getting a court order. (See Form JV-330, p. 2 ["… 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"].)	modified its recommendation accordingly.
			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~~ a parent asks for custody and their home is safe.	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 3, item 16: The judge will ~~only~~ replace you only if something has changed and it is in the child's best interests.	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 3, item 17: A court can ~~only~~ end an adoption only by terminating parental rights in a new juvenile or family law case.	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 4, first paragraph and heading: GUARDIAN'S RIGHTS AND ~~RESPONSIBILITIES~~ DUTIES (See Form GC-248, "DUTIES OF GUARDIAN.") 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~~: (Items 19–29 include some rights along with the duties, i.e., "you **may** ..." or "you **can**." See items 21-24, 28.)	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 4, item 20: You can allow (*consent to*) ~~to~~ most medical or dental treatment for the child.	The committee agrees with the suggestion and has modified its recommendation accordingly.

	Commenter	Position	Comment	Committee Response
			Page 4, item 24: Once the child enters ~~on~~ active duty, the guardianship will end.	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 4, item 25: (See ~~responsibilities~~ duties listed ~~below~~ in 26.)	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 4, item 26: If you're concerned about this ~~responsibility~~ duty, you should talk to a lawyer.	
			Page 4, item 27: **Willful misconduct.** In most cases, a guardian ~~could~~ can 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~~ may have to pay. **Negligent conduct.** You ~~could~~ can be made to pay for harm caused by the child's negligent conduct. If you're concerned about this ~~responsibility~~ duty, you should talk to a lawyer.	The committee agrees with the suggestion and has modified its recommendation accordingly.
			Page 5, for consistency between subheadings: *If the Child Is Related to You* *If the Child Is NOT Related to You* *If the Child Keeps Living with You After Turning 18*	The committee has addressed the inconsistency by placing the headings in sentence case.
			Page 5, query: What "department"? Should this specify the California Department of Social Services or some other department? 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.	The committee has addressed the query by deleting "the department" from page 5.

Item number: 39

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Develop a rule of court to (1) require a declaration in support of a petition under Probate Code section 2628 for waiver of an accounting in a guardianship or conservatorship to disclose whether the ward or conservatee owns a home and, if so, (2) require the declarant to attach documents showing current payments of the mortgage or other loan guaranteed by the home, all property taxes, and home insurance premiums. In the alternative, consider proposing an amendment to section 2628 to require the declaration supporting the petition to include that documentation. If this requirement is adopted, it will save the homes of many conservatees from being lost through foreclosure, tax sale, or an uncompensated fire loss.

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

SPR19-39

Title Probate Conservatorship and Guardianship: Accounting	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 7.575; approve form GC-410	Proposed Effective Date January 1, 2020
Proposed by Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Contact Corby Sturges, 415-865-4507 Corby.Sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends amending one rule of court to clarify the procedure for submitting original statements in support of a conservatorship or guardianship accounting when those statements are generated and issued electronically, and to require information about the personal residence of a conservatee or ward to be submitted in support of a request for a court order excusing an otherwise required accounting. The committee also proposes approving one form for optional use by a conservator or guardian to request an order excusing the filing of an otherwise required accounting. The recommendations are needed to facilitate implementation of existing statutory accounting requirements and to protect a conservatee's or ward's personal residence from loss or foreclosure by ensuring that the fiduciary is exercising ordinary care and diligence.

Background

Section 2620 of the Probate Code[1] requires a conservator or guardian of the estate to file an accounting with the court at regular intervals beginning one year from the date of appointment. (Prob. Code, §§ 2600, 2620.) As amended by Assembly Bill 1286 (Stats. 2001, ch. 563, § 6),

[1] All subsequent statutory references are to the Probate Code unless otherwise specified. All subsequent references to rules are to the California Rules of Court.

section 2620(c) requires that original account statements, not copies, be filed in support of an accounting.

Section 2628 authorizes a court to make an order "that the conservator need not present the accounts otherwise required by this chapter" if certain specified conditions are met. (Prob. Code, § 2628(a).) These conditions include a cap on the value of the estate, but exclude from that cap the value of the residence of the ward or conservatee.

The Proposal

The Probate and Mental Health Advisory Committee recommends amending rule 7.575 to clarify the requirement to submit original statements in support of a conservatorship or guardianship accounting when those statements are generated and issued electronically. This recommendation is needed to facilitate implementation of the requirement in section 2620(c) to submit original account statements and other financial documents in support of an accounting.

AB 1286 added the requirement to file original statements in support of accountings to prevent conservators from committing fraud by altering and photocopying statements, then submitting the altered copies to the court.[2] Neither the bill nor the Assembly Judiciary Committee analysis addressed the form required for a statement to qualify as an original. Fiduciaries and courts have encountered difficulty determining whether and when a printout of an electronic statement qualifies as an original statement under section 2620(c).

Section 255 of the Evidence Code provides assistance in resolving this question. First, the statute provides that an "original" is "the writing itself or any counterpart intended to have the same effect by the person … issuing it." Second, section 255 states that "[i]f data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original."[3]

Rule 7.575(f) would authorize a court to accept printouts of account statements created, stored, and delivered electronically if the printouts qualify as original writings under section 255. The fiduciary would have the burden of showing that the printed statements were authentic and that the information in the statements was accurate.

The committee also recommends amending rule 7.575 to require a conservator or guardian who files a request for an order excusing the filing of an otherwise required accounting to submit information about the personal residence of a conservatee or ward in support of that request. The additional information will assist the court to perform its oversight function (see Prob. Code,

[2] See Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1286 (2001–2002 Reg. Sess.) as amended Feb. 23, 2001, p. 3 ("author argues that courts need … originals, which are much more difficult to doctor" than photocopies).
[3] Evid. Code, § 255. Section 255 was added to the Evidence Code in 1977. (Stats. 1977, ch. 708, § 1.) Based on the absence of a definition of *original* in section 2620 and the Legislature's presumptive awareness of existing law (see *In re Greg F.* (2012) 55 Cal.4th 393, 407), the committee understands Evidence Code section 255's definition of original writing to apply to statements filed in satisfaction of section 2620(c)'s requirements.

§ 2102) more effectively and to prevent the loss of a conservatee's or ward's home through neglect or malfeasance.

The committee recommends approving one form for optional use by a conservator or guardian to request an order excusing the filing of an otherwise required accounting. The form will facilitate implementation of the requirements in section 2628(a) and rule 7.575(f).

Specifically, the committee recommends, effective January 1, 2020:

1. Amending rule 7.575 to:
    - Insert new subdivision (b) to clarify that a conservator or guardian may submit printouts of electronic account statements in support of accountings if those printouts qualify as original writings under section 255 of the Evidence Code;
    - Add subdivision (f) to specify that, in addition to verifying that the conditions in section 2628(a) are met, a request for a court order excusing an accounting under section 2628 must disclose whether the estate of the ward or conservatee includes a personal residence and, if so, document that the fiduciary has taken steps to maintain the estate's ownership of the residence; and
    - Reorganize and recast the rule's existing provisions to clarify the general statutory requirements for an accounting in a conservatorship or guardianship, to distinguish more clearly a simplified accounting from a standard accounting, and to specify when a simplified accounting may be filed.
2. Approving *Request for Order Excusing Accounting* (form GC-410) to promote submission of a request for a court order excusing an accounting that includes the information needed to verify that the conditions for granting the order have been met.

Alternatives Considered

The committee considered not recommending amendment of rule 7.575 or approval of form GC-410. Ongoing challenges with filing electronic statements in conservatorship and guardianship accountings and the need for courts to protect a conservatee's or ward's interest in a personal residence in light of the statewide housing crisis, however, persuaded the committee that the rule amendments are needed. Court staff suggested that an optional form would be useful to courts that had not already adopted a local form for requesting the order.

The committee also considered recommending adoption of form GC-410 for mandatory use. However, several courts have adopted local forms for the same purpose. The committee does not wish to preempt effective local practices that achieve the same goals as this form.

Fiscal and Operational Impacts

The proposal would clarify certain accounting requirements for self-represented guardians and conservators, facilitate the filing of accountings that comply with existing legal requirements, provide the court with more information to review the accountings, and reduce continuances and

other delay in reviewing accountings. The requirement to submit documentation of the fiduciary's activity to maintain a personal residence would impose an additional duty on the fiduciary, but that duty would be far less onerous than requiring the fiduciary to complete and file the accounting from which the fiduciary seeks excuse. The proposal would require courts that adopt form GC-410 to integrate the form into their case management systems. Some courts already have procedures in place to address requests to excuse or dispense with an accounting in a conservatorship or guardianship. This proposal is not intended to displace any of those procedures.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 7.575, at pages 5–9
2. Form GC-410, at pages 10–11

Rule 7.575 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 7.575. ~~Accounts~~ Accounting of conservators and guardians

~~This rule defines standard and simplified accountings filed by conservators and guardians under Probate Code section 2620(a), provides when each type of accounting must or may be filed, and prescribes the use of Judicial Council accounting forms in both types of accountings.~~

Unless excused by the court under section 2628 of the Probate Code, a conservator or guardian of the estate must file accountings in the frequency, manner, and circumstances specified in Probate Code section 2620. The court may order accountings to be filed more frequently than required by the statute. An accounting must be filed as a standard accounting unless this rule authorizes filing a simplified accounting.

(a) ~~Standard and simplified~~ Information required in all accountings

~~A standard accounting lists receipts and disbursements in subject-matter categories, with each receipt and disbursement category subtotaled. A simplified accounting lists receipts and disbursements chronologically, by receipt or payment date, without subject-matter categories.~~

Notwithstanding any other provision of this rule or the Judicial Council accounting forms, every accounting filed with the court must include:

(1) All information required by Probate Code sections 1060–1063 in the accounting schedules or the *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)); and

(2) All information required by Probate Code section 1064 in the petition for approval of the accounting or the report accompanying the accounting.

(b) Supporting documents

Each accounting filed with the court must include the supporting documents specified in section 2620(c) of the Probate Code.

(1) If an institution, financial institution, escrow agent, or care facility stores financial information in electronic form and delivers original statements electronically to the conservator or guardian, the court may accept printouts of those statements in satisfaction of section 2620(c) if those printouts qualify as original writings under the criteria in section 255 of the Evidence Code.

(2) The guardian or conservator filing the accounting has the burden of showing the authenticity of the printouts and the accuracy of the data they reflect.

(~~b~~c) Standard accounting ~~authorized or required~~

~~A conservator or guardian may file any accounting required or authorized by Probate Code section 2620 as a standard accounting under this rule and must file a standard accounting if:~~

~~(1) The estate contains income real property;~~

~~(2) The estate contains a whole or partial interest in a trade or business;~~

~~(3) The appraised value of the estate is $500,000 or more, exclusive of the conservatee's or ward's personal residence;~~

~~(4) Except as provided in (c)~~(d), ~~Schedule A (receipts) or Schedule C (disbursements) prepared in a simplified accounting format exceeds five pages in length; or~~

~~(5) The court directs that a standard accounting be filed.~~

A "standard accounting" reports receipts and disbursements in subject-matter categories, with each category listed subtotaled on a separate form. A conservator or guardian must file each accounting as a standard accounting unless a simplified accounting is authorized in (d)(1).

(~~c~~d) Simplified accounting ~~authorized~~

~~A conservator or guardian may file a simplified accounting in all cases not listed in (b). If required by this rule to file a standard accounting only because a receipts or disbursements schedule is longer than five pages under (b)(4), a conservator or guardian may file a simplified accounting, except for that schedule, which must be prepared in a standard accounting format.~~

A "simplified accounting" reports individual receipts and disbursements chronologically, by receipt or payment date, without separating them into subject-matter categories.

(1) A conservator or guardian may file a simplified accounting only if all the following requirements are met:

(A) The estate does not contain any income-generating real property;

(B) The estate does not contain either a whole or a partial interest in a trade or business;

(C) The appraised value of the estate, excluding the value of the conservatee's or ward's personal residence, is less than $500,000; and

(D) The court has not directed the fiduciary to file a standard accounting.

(2) If the requirements in (1) are met, but either *Schedule A, Receipts—Simplified Account* (form GC-405(A)) or *Schedule C, Disbursements—Simplified Account* (form GC-405(C)) would be longer than five pages, the conservator or guardian must use the standard forms for *Schedule A, Receipts* (forms GC-400(A)(1)–(6)) or *Schedule C, Disbursements* (forms GC-400(C)(1)–(11)) as applicable, but may otherwise file a simplified accounting.

(~~d~~e) ~~Standard and simplified accounting~~ Judicial Council forms

~~Judicial Council forms designated as GC-400 are standard accounting forms. Forms designated as GC-405 are simplified accounting forms. Forms designated as GC-400/GC-405 are forms for both standard and simplified accountings. Each form is also designated by a suffix following its accounting designator that identifies the form's intended use, based either on the form's schedule letter as shown in the *Summary of Account* (form GC-400(SUM)/GC-405(SUM)) or the form's subject matter.~~

The Judicial Council has approved two separate, overlapping sets of forms for accountings in conservatorships and guardianships.

(1) Forms intended for use in standard accountings are numbered GC-400.

(2) Forms intended for use in simplified accountings are numbered GC-405.

(3) Forms intended for use in both accounting formats bear both numbers.

(4) Each form number is followed by a suffix—for example, GC-405(A)—further to specify that form's intended use. The suffix indicates either the letter or subject matter of the form's schedule.

(5) The *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)) must be used in all accountings.

(6) Except for the *Summary of Account,* all standard accounting forms are optional. A conservator or guardian who files a standard accounting and elects not to use the Judicial Council forms must:

(A) Report receipts and disbursements in the same subject-matter categories specified in the Judicial Council standard accounting forms for receipts and disbursements schedules;

(B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required by the applicable Judicial Council standard accounting form; and

(C) Provide the information in the same general format as the applicable Judicial Council standard accounting form, except that instructional material and material contained or requested in the form's header and footer may be omitted.

(7) *Schedule A, Receipts—Simplified Account* (form GC-405(A)) and *Schedule C, Disbursements—Simplified Account* (form GC-405(C)) must be used in all simplified accountings unless (d)(2) requires use of the standard forms for Schedule A or Schedule C.

(8) A conservator or guardian filing a simplified accounting must use the appropriate form in the GC-405 series whenever the accounting covers an asset, a transaction, or an event to which that form applies.

~~**(e) Mandatory and optional forms**~~

~~(1) Judicial Council accounting forms adopted as mandatory forms must be used by standard and simplified accounting filers. Judicial Council accounting forms approved as optional forms may be used by all accounting filers. Judicial Council accounting forms designated as GC-400/GC-405 that are approved as optional forms may be used by standard accounting filers but must be used by simplified accounting filers.~~

~~(2) Standard accounting filers electing not to use optional Judicial Council accounting forms must:~~

~~(A) State receipts and disbursements in the subject-matter categories specified in the optional Judicial Council forms for receipts and disbursements schedules;~~

~~(B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required by the applicable Judicial Council accounting form; and~~

~~(C) Provide the information in the same general layout as the applicable Judicial Council accounting form, but instructional material contained in the form and material contained or requested in the form's header and footer need not be provided.~~

~~(f) Required information in all accounts~~

~~Notwithstanding any other provision of this rule and the Judicial Council accounting forms, all standard and simplified accounting filers must provide all information in their accounting schedules or their *Summary of Account* that is required by Probate Code sections 1060–1063 and must provide all information required by Probate Code section 1064 in the petition for approval of their account or the report accompanying their account.~~

(f) Excusing an otherwise required accounting

The court may make an order excusing a conservator or guardian from filing an otherwise required accounting if the conditions in Probate Code section 2628(a) are met. If the conservatee or ward owns a personal residence, the request for an order excusing an accounting must include, in addition to the information needed to verify that the conditions in section 2628(a) are met, the following information and documents regarding the personal residence:

(1) The street address of the residence;

(2) A true copy of the most recent residential property tax bill;

(3) A true copy of the declarations page from the homeowner's insurance policy covering the residence;

(4) A true copy of the most recent statement for any mortgage or loan secured by the residence; and

(5) A true copy of the most recent homeowners' association fee statement, if the residence is part of a homeowners' association.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(name):*

DRAFT
Not approved by the Judicial Council

CASE NUMBER:

REQUEST FOR ORDER EXCUSING ACCOUNTING
(Guardianships and Conservatorships)

HEARING DATE AND TIME: DEPT.:

1. I, *(name):*
   conservator or guardian of the estate ☐ and the person of *(name):*
   request that the court make an order excusing me from filing the accounting otherwise due on *(date):*
   covering the period from *(date):* to *(date):* .
2. The conservatee or ward named in 1 is now living at *(residence address):*

   ☐ This address is the conservatee's or ward's personal residence.
3. ☐ An Inventory and Appraisal of the estate was filed with the court on *(date):* .
4. At both the beginning and the end of the period covered by this request, the estate had a total net value of less than $15,000, excluding the value of the personal residence described in 5b, below. (*initial here):* ____
5. The estate of the conservatee or ward contains the following property *(check all that apply):*
   a. ☐ Cash or bank accounts in the amount of: $
   b. ☐ A personal residence. If not the current residence listed in 2, the personal residence is located at *(street address):*

      Verified copies of all of the following documents are included as Attachment 5b:
      (1) ☐ A true copy of the most recent residential property tax bill;
      (2) ☐ A true copy of the declarations page from the current homeowner's insurance policy covering the residence;
      (3) ☐ A true copy of the most recent statement for any mortgage or loan secured by the residence; and
      (4) ☐ A true copy of the most recent fee or dues statement for any homeowners' association or similar association.
   c. ☐ Other real or personal property valued at: $ *(describe the estate property here):*

      ☐ Additional property is described on Attachment 5c.
6. The estate's income for each month of the period covered by this request, excluding public benefits, was less than $2,000.
   (initial here): ____
7. During the period covered by this request, all the estate's income, if any, was used for the benefit of the conservatee or ward.
   (initial here): ____

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(name):*	CASE NUMBER:

8. The estate receives the following income each month *(list each source and amount, then give total amount):*

Source of income (e.g., pension, trust, social security)	Amount
	$
	$
	$
	$
	$

☐ Additional sources and amounts of income are provided on Attachment 8.

TOTAL (including all amounts from Attachment 8): $

9. Neither the sources nor amounts of the estate's income are expected to change in the foreseeable future, except for automatic cost-of-living adjustments. If the estate's monthly income does change, I will file a report explaining the changes.

10. This request covers estate activity during the period shown in 1, above, which begins with (1) the end of the period covered by the last accounting filed with and approved by the court or (2) the date the court last made an order excusing an accounting under section 2628 of the Probate Code, whichever is later, and ends on the date of the fiduciary's signature, below.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

▶ (SIGNATURE OF ATTORNEY)

Each fiduciary must sign here and initial items 4, 6, and 7.

I declare under penalty of perjury under the laws of the State of California that the information provided on this form and on any attachment is true and correct.

Date:

(TYPE OR PRINT NAME OF FIDUCIARY)

▶ (SIGNATURE OF FIDUCIARY)

Date:

(TYPE OR PRINT NAME OF FIDUCIARY)

▶ (SIGNATURE OF FIDUCIARY)

Deferred

Item number:41

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Graduated Filing Fee in Probate Proceedings (amend Cal. Rules of Court, rule 7.550; repeal rule 7.151)

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Examine rules 7.151 and 7.550(b)(10) of the California Rules of Court, which apply to graduated filing fees for petitions in decedents' estates cases, to determine whether they should be repealed. The underlying graduated filing fees were held unconstitutional in Estate of Claeyssens (2008) 161 Cal.App.4th 465, and the Judicial Council repealed rules 7.552 and 7.553, which also addressed those fees, effective January 1, 2015.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-41

Title
Rules and Forms: Graduated Filing Fee in Estate Administration Proceedings

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 7.550; repeal rule 7.151

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Corby Sturges, 415-865-4507
Corby.Sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends amending one rule of court and repealing one rule of court to remove the remaining references to a graduated filing fee from the probate rules. The statute that imposed a graduated filing fee in estate administration proceedings based on the value of the estate was held unconstitutional in 2008. The Judicial Council repealed two other rules implementing the graduated filing fee scheme, effective January 1, 2015, but did not repeal the rules addressed in this proposal.

Background

In 2003, the Legislature amended former Government Code section 26827 to impose a graduated filing fee on first petitions in estate administration proceedings.[1] The filing fee was based on the value of the estate: the greater the value, the higher the fee.[2] Later that year, the Legislature further amended section 26827(d) to require a subsequent petitioner who was not required to pay the graduated filing fee but was appointed as personal representative to reimburse the original petitioner the difference between the value-based fee and the basic fee.[3]

[1] Assem. Bill 1759 (Stats. 2003, ch. 159, § 9) (amending former Gov. Code, § 26827 to establish graduated filing fee).
[2] See former Gov. Code, § 26827(a)(1)–(9), as amended by Stats. 2003, ch.159, § 9.
[3] Assem. Bill 296 (Stats. 2003, ch. 757, § 4) (amending former Gov. Code § 26827(d)).

In response to these statutory amendments, the Judicial Council adopted rules 7.151, 7.550(b)(10), and 7.552 of the California Rules of Court, effective January 1, 2004, to provide mechanisms for adjusting the graduated filing fee in decedents' estates proceedings and for a successful subsequent petitioner to reimburse an unsuccessful original petitioner.[4]

Effective July 19, 2005, Government Code section 26827 was amended and renumbered as section 70650. (Assem. Bill 145; Stats. 2005, ch. 75, § 61.) In response to the 2005 amendments, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552, effective March 1, 2008.[5]

Since the voters approved Proposition 6 in 1982, section 13301 of the Revenue and Taxation Code has, with the exception of certain federal estate tax credits attributable to California property, prohibited the State of California from taxing decedents' estates, that is, gifts, inheritances, and other transfers that occur because of a person's death.[6] On March 27, 2008, the Court of Appeal found, in *Estate of Claeyssens* (2008) 161 Cal.App.4th 465, 468 (*Burkey*), that the statutory graduated filing fee operated as an ad valorem tax on decedents' estates. (*Id.* at p. 472.) Because Proposition 6 did not authorize the Legislature to repeal or amend its ban on estate taxes without voter approval, the court held the graduated filing fee unconstitutional under article II, section 10(c) of the California Constitution. (*Id.* at p. 473.)

In response to *Burkey,* the Legislature amended Government Code section 70650, effective January 1, 2009, to repeal the graduated filing fee in trusts and estates proceedings and replace it with a single uniform filing fee. The amendment also repealed the provision authorizing the Judicial Council to adopt implementing rules.[7]

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not consider repealing the rules in this proposal.[8]

The Proposal

The Probate and Mental Health Advisory Committee recommends amending rule 7.550 of the California Rules of Court to delete paragraph (b)(10). That paragraph requires a report submitted to the court under Probate Code section 10954(c) to include the information required by rule

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[4] Judicial Council of Cal., Advisory Com. Rep., *Probate Rules Concerning Mandatory Adjustments to the Graduated Filing Fee in Probate Proceedings* (Nov. 3, 2003) (recommending adoption of rules 7.550(b)(10) and 7.552); Judicial Council of Cal., Advisory Com. Rep., *Probate Rule Concerning Reimbursement of Graduated Filing Fee Paid by Unsuccessful Petitioner* (Nov. 3, 2003) (recommending adoption of rule 7.151). Unless otherwise specified, all subsequent references to rules are to the California Rules of Court.

[5] Judicial Council of Cal., Advisory Com. Rep., *Probate: Collection of the Graduated Filing Fee in Decedents' Estates* (Jan. 16, 2008).

[6] Rev. & Tax. Code, § 13301. Section 13301 was repealed and added by Proposition 6, a voter initiative (Prop. 6, §§ 1, 3 (approved June 8, 1982; eff. June 8,1982)), and reenacted in identical language by Stats.1982, ch. 1535, § 15.

[7] Assem. Bill 171 (Stats. 2008, ch. 310).

[8] Judicial Council of Cal., *Rules and Forms: Miscellaneous Technical Changes* (Sept. 15, 2014), p. 2. That report does not indicate why the council did not repeal rules 7.552 and 7.553 until 2015 or why it did not then also repeal rule 7.151 and amend rule 7.550(b) to delete paragraph (10).

7.552(a) and (b). Because the Judicial Council repealed rule 7.552, the requirement in rule 7.550(b)(10) has no referent and is therefore superfluous.

The committee also recommends repealing rule 7.151. The graduated filing fee implemented in part by rule 7.151 was repealed, effective January 1, 2009, by AB 171.

Specifically, the committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 7.550 to delete paragraph 7.550(b)(10); and
2. Repeal rule 7.151.

Alternatives Considered

The committee did not consider any alternatives to the recommended action because the underlying statutory authority for the provisions was held unconstitutional in 2008. The statutes were amended, effective January 1, 2009, to delete the unconstitutional provisions as well as the language authorizing the Judicial Council to adopt rules of court.

Fiscal and Operational Impacts

This proposal should have no fiscal or operational impact on courts or litigants. The trial courts have not charged a graduated filing fee in decedents' estates proceedings since January 1, 2009.

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. Cal. Rules of Court, rules 7.151 and 7.550, at pages 4–5

Rule 7.550 of the California Rules of Court would be amended and rule 7.151 would be repealed, effective January 1, 2020, to read:

~~**Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner**~~

~~**(a) Duty to reimburse**~~

~~In decedents' estates commenced on or after August 18, 2003, and before January 1, 2008, a general personal representative appointed on a *Petition for Probate* (form DE-111) that was not the first-filed petition for appointment of a general personal representative in the proceeding must reimburse the unsuccessful petitioner on the first-filed petition for a portion of the filing fee paid by the unsuccessful petitioner.~~

~~**(b) Amount of reimbursement**~~

~~The reimbursement required under this rule is in the amount of:~~

~~(1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee that would have been payable on that date for a *Petition for Probate* filed to commence administration of an estate valued at less than $250,000, less~~

~~(2) The unpaid amount of any costs or sanctions awarded against the unsuccessful petitioner in favor of the party that sought the personal representative's appointment in the proceeding.~~

~~**(c) When reimbursement payable**~~

~~The personal representative must make the reimbursement payment required under this rule in cash and in full no later than the date the *Inventory and Appraisal* (form DE-160/GC-040) is due under Probate Code section 8800(b), including additional time allowed by the court under that provision.~~

~~**(d) Payment from estate funds**~~

~~The reimbursement payment under this rule is an authorized expense of administration and may be made from estate funds without a prior court order.~~

~~**(e) Receipt from unsuccessful petitioner**~~

~~The unsuccessful petitioner must give a signed receipt for the reimbursement payment made under this rule.~~

~~(f) Personal representative's right to claim refund~~

~~A personal representative that is required to but fails to make the reimbursement payment under this rule may not claim a refund of the difference between the estimated filing fee and the corrected filing fee under rule 7.552(c).~~

~~(g) Petitioner on dismissed *Petition for Probate*~~

~~A petitioner that is eligible to receive a refund of filing fee for a dismissed *Petition for Probate* under rule 7.552(d) is not an unsuccessful petitioner within the meaning of this rule.~~

Rule 7.550. Effect of waiver of account

(a) * * *

(b) Information required in report on waiver of account

The report required when an account has been waived must list the information required by law, including information as to:

(1)–(9) * * *

~~(10) For decedent's estate proceedings commenced on or after August 18, 2003, the information required by rule 7.552(a) and (b).~~

Item number: 42

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Notices of Hearing in Probate Proceedings (adopt form DE-115/GC-015; revise form DE-120)

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

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: As mandated by rule 10.21(c), review suggestions from members of the judicial branch and the public for improving judicial administration, practice, and procedure in decedents' estate, trust, guardianship, conservatorship, and other proceedings under the Probate Code and recommend action by the council or one of its committees

Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs staff that may affect issues within the advisory committee's purview and, where appropriate, propose to the council rules and forms to implement the legislation or to bring rules and forms into conformity with it. This year, bills that may need implementation through rules and forms include AB 1290 (lawyer-client privilege), SB 909 (trusts), AB 2426 (trusts), AB 3248 (judiciary), and the bills discussed in item 7, below.

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

SPR19-42

Title
Rules and Forms: Notices of Hearing in Probate Proceedings

Proposed Rules, Forms, Standards, or Statutes
Adopt form DE-115/GC-015; revise form DE-120

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Corby Sturges, 415-865-4507
Corby.Sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends adopting one mandatory notice form and revising one mandatory notice form to give the information and advisements required by statute in (1) a notice of a petition filed under section 850 of the Probate Code and (2) a notice of hearing on a report of status of estate administration under section 12201 of that code. These revisions have been requested by courts and stakeholders. They are needed to conform to existing law, to promote access to the courts, and to allow timely distribution of the proceeds of decedents' estates.

Background

Form DE-120, *Notice of Hearing—Decedent's Estate or Trust,* is used to give notice of hearings in proceedings under the Probate Code[1] except for guardianships and conservatorships.[2]

Effective January 1, 2002, Senate Bill 669 (Stats. 2001, ch. 49) consolidated various provisions in the Probate Code dealing with determination of property claims involving estates of decedents, conservatees, minors, and trusts into sections 850–859. The bill authorized the

[1] All subsequent statutory references are to the Probate Code unless otherwise specified.
[2] *Notice of Hearing—Guardianship or Conservatorship* (form GC-020) must be used to give notice of a hearing in a guardianship or conservatorship proceeding.

probate court to resolve questions of title affecting property and any related claims by or against a fiduciary acting on behalf of an estate or other person.[3]

Effective January 1, 2018, Assembly Bill 308 (Stats. 2017, ch. 32, § 1) amended section 851 to require a notice of hearing on a petition under section 850 to include (1) a description of the property at issue, (2) a description of any relief sought for bad-faith conduct or financial abuse, and (3) a statement that any person interested in the property may file a response to the petition.

Since January 1, 1991, and operative July 1 of that year, section 12201 has required that notice of a hearing on a report of the status of estate administration include "a statement in not less than 10-point boldface type or a reasonable equivalent thereof if printed, or in all capital letters if not printed, in substantially the following words: 'YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE.'" (Stats. 1990, ch. 79, § 14.)

The Proposal

The Probate and Mental Health Advisory Committee recommends adopting *Notice of Petition to Determine Claim to Property* (form DE-115/GC-015) and revising *Notice of Hearing—Decedent's Estate or Trust* (form DE-120) to implement the statutory requirements described above and conform to Judicial Council form standards.

Specifically, the committee recommends, effective January 1, 2020:

1. Adopting form DE-115/GC-015 to give notice of a hearing and a petition under section 850 to the persons listed in section 851(a) and (b) in conformity with section 851(c), which requires that the notice:
   - Describe the property in dispute with sufficient specificity to give adequate notice to any person who has an interest in the property;
   - Advise interested persons that each may file a response to the petition; and
   - Describe the relief sought for alleged bad-faith conduct or elder abuse with sufficient specificity to give notice to any person against whom that relief is sought.
2. Revising form DE-120 to
   - Indicate whether the subject of the noticed hearing is a report of status of decedent's estate administration under section 12201 and, if it is, add the required statement advising interested persons of their right to petition for an accounting;
   - Update the instructions for requesting an accommodation under the Americans with Disabilities Act;
   - Update statutory references in the form footer; and
   - Conform to current Judicial Council form standards.

[3] Sen. Com. on Judiciary, Analysis of Sen. Bill No. 669 (2001–2002 Reg. Sess.) as introduced, p. 1.

Alternatives Considered

The committee considered not recommending any revisions to form DE-120, as the statutes seem to place the burden on the filing parties to provide the requested information. However, in light of requests from courts and stakeholders, as well as the judicial branch's interests in providing access to the courts, giving all interested persons notice and an opportunity to be heard, and resolving cases efficiently, the committee elected to recommend these revisions.

The committee also considered recommending the incorporation of the notices and advisements required by section 851 into form DE-120 and not recommending a separate form for notice of hearing and a section 850 petition. The committee determined, however, that resolving a claim to specific property implicated rights sufficiently independent of an underlying estate proceeding to warrant a dedicated notice form, that a crossover form was needed because a section 850 petition may also be filed in a guardianship or conservatorship estate proceeding, and that adding the required elements to form DE-120 would make that form confusing and difficult to use.

Fiscal and Operational Impacts

The proposal would require courts to develop processes for using form DE-115/GC-115, replace current inventories of form DE-120, and possibly enter one or more new data elements into their case management systems. Based on the requests for the proposal from courts, the revisions will probably reduce the frequency with which examiners need to flag a notice on a section 850 petition or a report of status of administration for procedural deficiencies, and thereby reduce the frequency of continued hearings and increase the efficiency of case processing.

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 DE-115/GC-015 and DE-120, at pages 4–7

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

☐ ESTATE OF ☐ TRUST OF *(name):*

☐ DECEDENT ☐ CONSERVATEE ☐ MINOR ☐ SETTLOR

DRAFT
Not approved by the Judicial Council

NOTICE OF PETITION TO DETERMINE CLAIM TO PROPERTY

CASE NUMBER:

A petition has been filed asking the court to determine a claim to the property identified in 3, and a hearing on the petition has been set. Please refer to the petition for more information.

If you have a claim to the property described in 3, you may attend the hearing and object or respond to the petition. If you do not want to attend the hearing, you may also file a written response before the hearing.

If you do not respond to the petition or attend the hearing, the court may decide the claim to the property without your input.

1. NOTICE is given that *(name):*
(fiduciary or representative capacity, if any):
has filed a petition under Probate Code section 850 asking for a court order determining a claim to the property described in 3.

2. A HEARING on the petition will be held as follows:

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

3. The property that is the subject of the petition is *(describe each item of real or personal property; for real property—i.e., land or buildings—give the street address or, if none, describe the property's location and give the assessor's parcel number):*

Check 4 only if the petition seeks the additional relief described.

4. ☐ In addition to seeking to recover the property described in 3, the petition also alleges and seeks relief for bad faith conduct, undue influence in bad faith, or elder or dependent adult financial abuse. The petition describes these allegations in detail. Based on the allegations, the petition seeks to recover twice the value of the property described in 3 ☐ and requests that the court award attorney's fees and costs to the petitioner. (Prob. Code, § 859.)

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 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.)

☐ ESTATE OF ☐ TRUST OF *(name):* ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR ☐ SETTLOR	CASE NUMBER:

PROOF OF SERVICE BY MAIL*

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*
3. I served the foregoing *Notice of Hearing—Petition to Determine Claim of Property Ownership* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed:
   b. Place mailed *(city, state):*
5. ☐ I served with the *Notice of Hearing—Petition to Determine Claim of Property Ownership* a copy of the petition referred to in the Notice.

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)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name	Address *(street & number, city, state, zip code)*
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

☐ Continued on an attachment. *(You may use* Attachment to Notice of Hearing Proof of Service by Mail, form DE-120(MA)/GC-020(MA), *for this purpose.)*

* Do **not** use this form to prove personal or electronic service. You may use form DE-120(P) or GC-020(P) to prove personal service.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

DRAFT
Not approved by the Judicial Council

☐ ESTATE OF *(name):* ☐ IN THE MATTER OF *(name):*

☐ DECEDENT ☐ TRUST ☐ OTHER

NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST

CASE NUMBER:

This notice is required by law. You are not required to appear in court, but you may attend the hearing and object or respond if you wish. If you do not respond or attend the hearing, the court may act on the filing without you.

1. NOTICE is given that *(name):*
   (fiduciary or representative capacity, if any):
   has filed a petition, application, report, or account *(specify and briefly describe):**

Please refer to the filed documents for more information about the case. *(Some documents filed with the court are confidential.)*

2. A HEARING on the matter described in 1 will be held as follows:

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

NOTICE
If the filing described in 1 is a report of status of decedent's estate administration,
YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNTING UNDER SECTION 10950 OF THE PROBATE CODE.

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 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.)

* Do **not** use this form to give notice of a petition to administer an estate (see Prob. Code, § 8100 and use form DE-121) or notice of a hearing in a guardianship or conservatorship case (see Prob. Code, §§ 1511 and 1822 and use form GC-020).

☐ ESTATE OF *(name):* ☐ IN THE MATTER OF *(name):* ☐ DECEDENT ☐ TRUST ☐ OTHER	CASE NUMBER:

CLERK'S CERTIFICATE OF POSTING

1. I certify that I am not a party to this cause.
2. A copy of the foregoing *Notice of Hearing—Decedent's Estate or Trust*
   a. was posted at *(address):*

   b. was posted on *(date):*

Date: Clerk, by _____, Deputy

PROOF OF SERVICE BY MAIL*

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*

3. I served the foregoing *Notice of Hearing—Decedent's Estate or Trust* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed:
   b. Place mailed *(city, state):*
5. ☐ I served with the *Notice of Hearing—Decedent's Estate or Trust* a copy of the petition or other document referred to in item 1 of the Notice.

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)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name	Address *(street & number, city, state, zip code)*
1.	
2.	
3.	
4.	
5.	

☐ Continued on an attachment. *(You may use* Attachment to Notice of Hearing Proof of Service by Mail, *form DE-120(MA)/GC-020(MA), for this purpose.)*

* Do **not** use this form for proof of personal service. You may use form DE-120(P) to prove personal service of this Notice.

Deferred

Item number: 45

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Revisions to Continuance Forms
Revise forms CH-115, CH-116, DV-115, DV-116, EA-115, EA-116, GV-115, GV-116, SV-115, SV-116, WV-115, and WV-116

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

Staff contact (name, phone and e-mail): Kristi Morioka, 916-643-7056, kristi.morioka@jud.ca.gov
Frances Ho, 415-865-7662, frances.ho@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 03/07/2019 by e-mail vote
Project description from annual agenda: Family and Juvenile - Item 12. Restraining Order Forms: Order on Request to Continue Hearing. As lead committee for Protective Orders Working Group (POWG), work with Civil Small Claims Advisory Committee to revise forms DV-116, CH-116, EA-116 and GV-116 to clarify whether the restrained person needs to be served for enforcement purposes.

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

SPR19-45

Title
Protective Orders: Revisions to Continuance Forms

Proposed Rules, Forms, Standards, or Statutes
Revise forms CH-115, CH-116, DV-115, DV-116, EA-115, EA-116, GV-115, GV-116, SV-115, SV-116, WV-115, and WV-116

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

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

Action Requested
Review and submit comments by June, 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Frances Ho, (415) 865-7662
frances.ho@jud.ca.gov

Kristi Morioka, (916) 643-7056
kristi.morioka@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee and Civil and Small Claims Advisory Committee jointly recommend revising twelve protective order forms (the request and order on continuance for each of the CH, DV, EA, GV, SV, and WV series forms). Changes are needed to the order forms to ensure that these protective orders are properly entered into the California Law Enforcement Telecommunication System (CLETS), a California protective order database. Revisions are also needed to the domestic violence and gun violence series to implement recent changes in the law, Assembly Bill 2694 (Stats. 2018, ch. 219) and Senate Bill 1200 (Stats. 2018, ch. 898).

Background

The current versions of the *Order on Request to Continue Hearing* (the forms numbered "116" in each series) are creating some confusion for individuals responsible for entering protective order information into CLETS. Specifically, each protective order entry requires information regarding the status of service (i.e., whether the restrained party has notice of the protective order or does

not have notice and therefore needs to be served). This information is provided to law enforcement in the field so they know whether a restraining order has been served for enforcement purposes.[1] The proposed revisions would make it clear when a temporary restraining order, issued as part of a continuance, needs to be served for enforcement purposes.

In 2016, the forms were revised to implement the provisions in AB 1081 (Stats. 2015, ch. 411), which allows either party in a case to request a continuance. The order forms were revised to include the possibility of either side being served with the order. As a result, the Service of Order section was expanded to include when the restrained person would have to serve the protected person.[2] While this addition made sense from the court's perspective, it did not give the exact information needed for CLETS, specifically that service is not required for enforcement purposes when the restrained party is the requesting party or when a restrained party agreed to the continuance. The committees recommend revising the forms to ensure that information regarding service for enforcement purposes is included.

Additional revisions to the forms numbered "115" and "116" in each series are also needed to implement the new laws. SB 1200 requires the court to set a hearing within 21 days after a *Gun Violence Emergency Protective Order* (form EPO-002) has been issued. In these matters, courts may need to continue the initial hearing if there is good cause. Additional revisions to existing forms GV-115 and GV-116 are recommended so that these forms may be used to continue a hearing on the extension of a gun violence emergency protective order.

AB 2694 gives the court discretion to allow for an alternative method of service in a domestic violence restraining order proceeding when the moving party (the person seeking protection), after diligent efforts, is unable to personally serve the person to be restrained, and there is reason to believe that the person to be restrained is evading service.[3] The court may make this order at the time of hearing. If the request for alternative service is granted, the court would need to continue the matter to give the moving party time to serve by an alternative method allowed by the court. The order form that the court would use in this situation is *Order on Request to Continue Hearing* (form DV-116). The Family and Juvenile Law committee recommends revising form DV-116 to include options for alternative service.

The Proposal

Order on request to continue hearing (forms numbered "116")

In CLETS, each protective order must indicate whether service is needed or has been fulfilled for enforcement purposes. This information informs law enforcement of whether a violation of a restraining order has occurred. The revisions to the Service of Order section should make it clear

[1] Oral notification of the terms of a restraining order are sufficient for enforcement purposes under Penal Code sections 136.2(g) and 273.6.

[2] See item 9(c) on current version of form DV-116 at www.courts.ca.gov/documents/dv116.pdf.

[3] Fam. Code, § 6340(a)(2)(A).

whether service on the restrained person is required for enforcement purposes and would facilitate accurate entry into CLETS.

The committees also recommend additional revisions to improve all of the existing protective order forms numbered "116":

- Remove item 3[4], "Party Seeking Continuance,"[5] as this information seems unnecessary on an order form. Eliminating this section would save time for individuals completing this form and reduce the chances of private contact information being unintentionally provided;
- Revise the "Order on Request for Continuance" and "Order For Continuance and Notice of New Hearing" sections to simplify the language and design and to use consistent language across all 116-numbered forms;
- Move the "Warning and Notice to the Party in 2" (concerning the extension of the restraining order) to the first page where it is more visible;
- Revise the "Extension of Temporary Restraining Order" section to simplify language to make it easier to understand and to allow the court to fill in an expiration date for the temporary restraining order. In some cases, matters have more than one court date before the trial/long-cause hearing and courts would like to extend the temporary restraining orders to the day of trial/long-cause hearing rather than the date of the next hearing;
- In the "Service of Order" section, allow the court to fill in the deadline for service. This gives courts more flexibility and also provides better information to the litigant;
- Revise the "No Fee to Serve" section to make it clear that service by the sheriff or marshal is free but that the litigant needs to take the papers to the sheriff or marshal (i.e., service by sheriff or marshal will not occur without action by the litigant); and
- Move the information related to CLETS entry[6] to the end of the form as "Instructions to Clerk." The information contained under this section is required by law and therefore does not need to be ordered by the court; however, it should be included on the form to ensure that CLETS is properly updated.

The gun violence restraining order (GVRO) forms generally parallel the other protective order forms, but differ in two regards. First, the GVRO statutes do not automatically allow the restrained person to request and obtain a first continuance. Therefore, this is not a reason for continuance listed under item 5 of form GV-116. Second, unlike other protective orders, in GVRO proceedings a continuance may be granted on a hearing initiated by the issuance of an

[4] This is item 1 on the current version of GV 116.
[5] The committees are seeking specific comment on whether the forms should include the contact information of the requesting party.

[6] See item 11 on the current version of forms DV-116 and EA-116 and item 10 on the current version of forms CH-116, SV-116, and WV-116.

emergency protective order (form EPO-002). Revisions to forms GV-115 and GV-116 are needed so that these forms may be used in proceedings initiated by emergency protective orders.

Request to continue hearing (forms numbered "115")

The committees also recommend revising the 115-numbered forms so that the reasons for continuance parallel those listed on the 116-numbered forms. Other changes are recommended to improve usability for self-represented litigants and the courts, including:

- Moving the lawyer's information to the last item under "My Information";
- Giving examples of mailing addresses that could be used (post office box, a third party's address);
- Providing space for the person requesting a continuance to explain their reason for making a request, giving the court information needed to determine whether good cause exists;[7] and
- Stating each item in the first person.

Committee members are considering additional revisions due to concern that a request for continuance could be made by one party without notice to the other party. The committees acknowledge that court practices on ex parte requests for continuances vary and that ex parte notice must also comply with a "no-contact" order, if being made by the restrained party. The committees are seeking comment about whether to include an additional item that queries whether notice has been provided to the other party:[8]

☐ Does the other party know that you are asking to reschedule the hearing?

☐ Yes, a copy of this request (before I filed it) was served on the other party. *File form DV-200 or DV-250 with the court.*

☐ No.

Explain: _____

_____

Additional changes needed to implement new laws

Revisions are needed to forms DV-115 and DV-116 to include items regarding alternative service. Form DV-115 would include an option in item 4 to allow the moving party to request a continuance based on lack of service and for permission to use an alternative method of service.

[7] For domestic violence restraining order proceedings, see Family Code section 245; for civil harassment proceedings, see Code of Civil Procedure section 527.6(p); for elder abuse restraining order proceedings, see Welfare and Institutions Code section 15657.03(n); for gun violence restraining order proceedings, see Penal Code section 18195; for school violence proceedings, see Code of Civil Procedure section 527.85(p); and for workplace violence proceedings, see Code of Civil Procedure section 527.8(p).

[8] The potential item refers to the DV proofs of service, but, if implemented, would go on all of the forms numbered 115.

As noted above, revisions to forms GV-115 and GV-116 are also needed to implement provisions of SB 1200, which requires the court to set a hearing within 21 days upon the issuance of a temporary emergency gun violence restraining order (form EPO-002). The revisions are as follows:

- Form GV-115 would be further modified to include at item 4 a check box to indicate whether a temporary restraining order or an emergency protective order (EPO) is in effect, pending the hearing, and warn that pending the continuance the temporary restraining order or EPO will remain in effect until the new hearing;
- Form GV-116, at item 3, would include "emergency protective order" as an order that would remain in effect if previously issued by the court; and
- Form GV-116, at item 4, would include "emergency protective order" as an order that could be extended, modified, or terminated upon a continuance.

The Civil and Small Claims Advisory Committee is seeking specific comment on whether law enforcement agencies should have the ability to request a continuance on an EPO if the EPO has not been served on the restrained party. If continuances may be granted for this reason, then the committee would recommend that a note be included at item 3a on form GV-115 and item 6d on form GV-116 that these sub-items only apply to temporary restraining orders.

Alternatives Considered

The committees considered not revising the forms but rejected that alternative because of the need to clarify the service requirements for CLETS entry and the need to implement the new statutory provisions.

Additionally, the Family and Juvenile Law Advisory Committee considered including an item on the *Request to Continue Hearing* (form DV-115) to allow the moving party to request permission to serve by alternative means. The committee rejected this alternative because form DV-115 is typically used with the goal of having the hearing rescheduled without having to make an appearance at the scheduled hearing. For a request on alternative service, the court would need to make the determination as to whether the person qualifies for alternative service and would likely make this determination at the scheduled hearing. There are also other forms that could be used to make a request for alternative service (e.g., *Application for Order for Publication or Posting* (form FL-980) could be used to show due diligence).

Fiscal and Operational Impacts

The committees anticipate that this proposal will result in some costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the forms include the contact information for the requesting party? If so, please explain.
- Should an additional item be added to the *Request to Continue Hearing* (115-numbered forms) to ask whether the other party received notice of the request for continuance?
- For gun violence restraining orders, should law enforcement agencies have the ability to request a continuance on an emergency protective order if the emergency protective order has not been served?
- Are the forms easy for users to understand?
- Do you have any suggestions for improving their usability or readability?

The advisory committee 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 CH-115, CH-116, DV-115, DV-116, EA-115, EA-116, GV-115, GV-116, SV-115, SV-116, WV-115, and WV-116, at pages 7–36
2. AB 2694, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2694*
3. SB 1200, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1200*

CH-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

03-27-19

Not approved by the Judicial Council

Instructions: Use this form to ask the court to change the hearing date listed on form CH-109, *Notice of Court Hearing*. Read CH-115-INFO, *How to Ask for a New Hearing Date,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

I am the ☐ party seeking protection.
☐ restrained party.

b. Address where I can receive mail:

If you have a lawyer, give your lawyer's address and contact information. This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission.

Address: _____

City: _____ State: ___ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court hearing currently scheduled for *(date)*: _____

3 Is There a Temporary Restraining Order in Effect?

☐ Yes. Date the order was made, if known: _____

Please attach a copy of the order if you have one.

☐ No.

☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form CH-110) will remain in effect until the end of the new hearing unless otherwise ordered by the court.

This is not a Court Order.

Case Number:

4 Why Does the Court Hearing Need to be Rescheduled?

a. ☐ I need more time to have the restrained party personally served.

b. ☐ I am the restrained party and this is my first request to reschedule the hearing.

c. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case (for example, the next court date, charges, case number, arrest date). _____

d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain: _____

e. ☐ Other reason: _____

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

CH-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 3/27/2019

Complete items (1) and (2) only.

(1) Protected Party: _____

(2) Restrained Party: _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any *Temporary Restraining Orders* (form CH-110) previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a(2).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below. See additional orders in (4)-(8).

New Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ The *Temporary Restraining Order* (form CH-110) is EXTENDED. The orders listed in form CH-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ The Temporary Restraining Order is MODIFIED. The court signed a new *Temporary Restraining Order* (form CH-110). The new orders expire at the end of the hearing on *(date):* _____.

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 4d.

_____

_____

e. ☐ Other *(specify):* _____

Warning and Notice to the Restrained Party

If (4)b or c is checked, a Civil Harassment Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

5 Reason to Reschedule Hearing

a. ☐ The restrained party has not been served.

b. ☐ The restrained party asked for a first continuance of the hearing.

c. ☐ The restrained party has a pending criminal case related to this case.

d. ☐ The party wanting a continuance needs more time to hire a lawyer or prepare for the hearing or trial.

e. ☐ The court finds good cause and orders a continuance of its own discretion.

f. ☐ Other good cause:

_____

_____

☐ See Attachment 5f.

6 Service of Order

(Check at least one.)

a. ☐ Restrained party was at the court hearing. Further service of this order is not required for enforcement purposes.

b. ☐ Restrained party agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.

c. ☐ The request to continue hearing is being made by the restrained party.

(1) Further service of this order is not required for enforcement purposes.

(2) ☐ Restrained party must have the protected party served with a copy of this order no later than *(date)*: _____ .

d. ☐ The restrained party MUST be personally served with a copy of this order and a copy of all the documents indicated on form CH-109, *Notice of Court Hearing*, item 6, no later than *(date)*: _____.

e. ☐ Other: _____

_____

_____

_____

☐ See Attachment 6e.

This is a Court Order.

Case Number:

7 ☐ **Other Orders**:

8 **No Fee to Serve (Notify) Restrained Person** ☐ **Ordered** ☐ **Not Ordered**

The sheriff or marshal will serve this Order without charge (fee) because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

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.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the date the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order)* (CLETS-TCH) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

Instructions: Use this form to ask the court to change the hearing date listed on form DV-109, *Notice of Court Hearing*. Read DV-115-INFO, *How to Ask for a New Hearing Date,* for more information.

1 My Information

a. My name is: _____

I am the ☐ party seeking protection.
☐ restrained party.

b. Address where I can receive mail:

This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission. If you have a lawyer, give your lawyer's address and contact information.

Address: _____

City: _____ State: ____ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Information About My Case

a. The other party in this case is (*full name*): _____

b. I have a court hearing currently scheduled for *(date)*: _____

3 Is There a Temporary Restraining Order in Effect?

☐ Yes. Date the order was made, if known: _____

Please attach a copy of the order if you have one.

☐ No.

☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form DV-110) will remain in effect until the end of the new hearing unless otherwise ordered by the court.

This is not a Court Order.

Case Number:

4 Why Does the Court Hearing Need to be Rescheduled?

a. ☐ I need more time to have the restrained party personally served.

b. ☐ I am the restrained party and this is my first request to reschedule the hearing.

c. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case for example the next court date, charges, case number, arrest date. _____

d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain: _____

e. ☐ The court has ordered me to meet with a child custody mediator/recommending counselor and I have not been able to meet with one.
Explain: _____

f. ☐ Other reason: _____

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

DV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT- 3/2019
NOT APPROVED BY JUDICIAL COUNCIL

Complete items (1) and (2) only.

(1) Protected Party: _____

(2) Restrained Party: _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any Temporary Restraining Orders previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a(2).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below. See additional orders in (4)-(8).

New Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ The *Temporary Restraining Order* (form DV-110) is EXTENDED. The orders listed in form DV-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ The Temporary Restraining Order is MODIFIED. The court signed a new *Temporary Restraining Order* (form DV-110). The new orders expire at the end of the hearing on *(date):* _____.

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 4d.

_____

_____

e. ☐ Other *(specify):* _____

Warning and Notice to the Restrained Party

If (4)b or c is checked, a Domestic Violence Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

Case Number:

5 Reason to Reschedule Hearing

a. ☐ The restrained party has not been served.
b. ☐ The restrained party asked for a first continuance of the hearing.
c. ☐ The restrained party has a pending criminal case related to this case.
d. ☐ The party wanting the continuance needs more time to hire a lawyer or prepare for the hearing or trial.
e. ☐ The parties must meet with a child custody mediator or recommending counselor.
f. ☐ The court finds good cause and orders a continuance in its discretion.
g. ☐ Other good cause:

_____

_____

☐ See Attachment 5g.

6 Service of Order

(Check at least one.)

a. ☐ Restrained party was at the court hearing. Further service of this order is not required for enforcement purposes.

b. ☐ Restrained party agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.

c. ☐ The request to continue hearing is being made by the restrained party.

(1) Further service of this order is not required for enforcement purposes.

(2) ☐ Restrained party must have the protected party served with a copy of this order no later than *(date):* _____ .

d. ☐ The restrained party MUST be personally served with a copy of this order and a copy of all the documents indicated on form DV-109, *Notice of Court Hearing*, item 6, no later than *(date):* _____ .

e. ☐ The restrained party may be served by substituted service, with a copy of (1) this order, (2) a copy of all the documents indicated on form DV-109, item 6, and (3) a copy of form DV-210, *Summons (Domestic Violence Restraining Order)*, no later than *(date):* _____ , at the restrained party's

☐ home ☐ mailing address ☐ workplace.

For more information on substituted service, read form DV-205-INFO, What if the Person I Want Protection from is Avoiding (Evading) Service?

f. ☐ The restrained party may be served by ☐ publication in a newspaper ☐ posting in a courthouse.
The protected party must follow the detailed orders listed on form FL-982, *Order for Publication or Posting*.

g. ☐ Other _____

_____

_____

☐ See Attachment 6g.

This is a Court Order.

7 No Fee to Serve

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that need to be served to the sheriff or marshal.

8 ☐ Other Orders:

_____

_____

_____

_____

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.htm* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order)* (CLETS-TRO) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

EA-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 3/27/2019
NOTAPPROVED BY
JUDICIAL COUNCIL

Instructions: Use this form to ask the court to change the hearing date listed on form **EA-109**, *Notice of Court Hearing*. Read **EA-115-INFO**, *How to Ask for a New Hearing Date,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

I am the
- ☐ elder or dependent adult seeking protection.
- ☐ person requesting protection for the elder or dependent adult *(person named in item 3 of form EA-100).*
- ☐ restrained party.

b. Address where I can receive mail:

If you have a lawyer, give your lawyer's address and contact information.This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission.

Address: _____

City: _____ State: ____ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court hearing currently scheduled for *(date)*: _____

3 Is There a Temporary Restraining Order in Effect?

- ☐ Yes. Date the order was made, if known: _____
  Please attach a copy of the order if you have one.
- ☐ No.
- ☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form EA-110) will remain in effect until the end of the new hearing unless otherwise ordered by the court.

This is not a Court Order.

Case Number:

4 Why Does the Court Hearing Need to be Rescheduled?

a. ☐ I need more time to have the restrained party personally served.

b. ☐ I am the restrained party and this is my first request to reschedule the hearing.

c. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case (for example, next court date, charges, case number, arrest date). _____

d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain: _____

e. ☐ Other reason: _____

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

EA-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 3/27/2019

Complete items (1) and (2) only.

(1) Protected Party: _____

(2) Restrained Party: _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any *Temporary Restraining Orders* (form EA-110) previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a(2).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below. See additional orders in (4)-(8).

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

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ The *Temporary Restraining Order* (form EA-110) is EXTENDED. The orders listed in form EA-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ The Temporary Restraining Order is MODIFIED. The court signed a new *Temporary Restraining Order* (form EA-110). The new orders expire at the end of the hearing on *(date):* _____.

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 4d.

_____

_____

e. ☐ Other *(specify):* _____

Warning and Notice to the Restrained Party

If (4)b or c is checked, a Temporary Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

Case Number:

5 Reason to Reschedule Hearing

a. ☐ The restrained party has not been served.

b. ☐ The restrained party asked for a first continuance of the hearing.

c. ☐ The restrained party has a pending criminal case related to this case.

d. ☐ The party wanting a continuance needs more time to hire a lawyer or prepare for the hearing or trial.

e. ☐ The court finds good cause and declares a continuance in its discretion.

f. ☐ Other good cause:

_____

_____

☐ See Attachment 5f.

6 Service of Order

(Check at least one.)

a. ☐ Restrained party was at the court hearing. Further service of this order is not required for enforcement purposes.

b. ☐ Restrained party agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.

c. ☐ The request to continue hearing is being made by the restrained party.

(1) Further service of this order is not required for enforcement purposes.

(2) ☐ Restrained party must have the protected party served with a copy of this order no later than *(date):* _____ .

d. ☐ The restrained party MUST be personally served with a copy of this order and a copy of all the documents indicated on form EA-109, *Notice of Court Hearing*, item 5, no later than *(date):* _____.

e. ☐ Other : _____

_____

_____

_____

☐ See Attachment 6e.

This is a Court Order.

Case Number:

7 ☐ Other Orders:

8 No Fee to Serve

The sheriff or marshal will serve this order for free.

Bring a copy of all the papers that need to be served to the sheriff or marshal.

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.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the date the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order)* (CLETS-TEA or TEF) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

GV-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

Draft 3/27/2019 NOT APPROVED BY JUDICIAL COUNCIL

Instructions:
Use this form to ask the court to change the hearing date listed on form GV-109, *Notice of Court Hearing*. (Read GV-115-INFO, *How to Ask for a New Hearing Date,* for more information)

1 My Information

a. My name is: _____

I am the ☐ petitioner.
☐ respondent.

b. Address where I can receive mail:
If you have a lawyer, give your lawyer's contact information. This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission.

Address: _____

City: _____ State: ___ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Text

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court hearing currently scheduled for *(date):* _____

3 Why does the court hearing need to be rescheduled?

a. ☐ I could not get the papers served before the hearing date. I need more time to have the restrained party personally served.

b. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case (for example, the next court date, charges, case number, arrest date).

_____

_____

_____

_____

c. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain:

_____

_____

_____

This is not a Court Order.

3 d. ☐ Other reason:

_____
_____
_____
_____
_____

4 Is There a Temporary Restraining Order or Emergency Protective Order in Effect?

☐ Yes. Date the order was made, if known: _____
Please attach a copy of the order if you have one.

☐ No.

☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form GV-110) or *Emergency Protective Order* (form EPO-002) will remain in effect until the end of the new hearing, unless otherwise ordered by the court.

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

GV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

03-27-19

Not approved by the Judicial Council

Complete items (1) and (2) only.

(1) **Petitioner:** _____

(2) **Respondent:** _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any Temporary Restraining Orders or Emergency Protective Orders previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below.
See additional orders in (4)-(8)

New Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order or Emergency Protective Order

a. ☐ The *Emergency Protective Order* (form EPO-002) is EXTENDED.
The orders listed in form EPO-002, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

b. ☐ The *Temporary Restraining Order* (form GV-110) is EXTENDED.
The orders listed in form GV-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ Other *(specify):* _____

Warning and Notice to the Party in (2)

If (4) a or b is checked, a Gun Violence Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

5 Reason to Reschedule Hearing

a. ☐ The party in 2 has not been served.
b. ☐ The party in 2 has a pending criminal case related to this case.
c. ☐ The party wanting the continuance needs more time to hire a lawyer or prepare for the hearing or trial.
d. ☐ The court finds good cause and orders a continuance in its discretion.
e. ☐ Other good cause:

_____

_____

☐ See Attachment 5e.

6 Service of Order

(Check at least one.)

a. ☐ Respondent was at the court hearing. Further service of this order is not required for enforcement purposes.
b. ☐ Respondent agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.
c. ☐ The request to continue hearing is being made by the Respondent.
   (1) Further service of this order is not required for enforcement purposes.
   (2) ☐ Respondent must have the Petitioner served no later than *(date):* _____
d. ☐ *(For Temporary Restraining Orders only)*. The Respondent MUST be personally served a copy of this order no later than *(date):* _____
   (1) ☐ All other documents, as checked in GV-109, item 6, must be personally served on the restrained party.
   (2) ☐ Other: _____
e. ☐ Other _____

_____

_____

_____

☐ See Attachment 6e.

7 No Fee to Serve

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that need to be served to the sheriff or marshal.

This is a Court Order.

8 ☐ **Other Orders**:

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.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (EPO or Temporary Restraining Order)* (CLETS-TRO) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

SV-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

03-27-19

Not approved by the Judicial Council

Instructions: Use this form to ask the court to change the hearing date listed on form SV-109, *Notice of Court Hearing*. Read SV-115-INFO, *How to Ask for a New Hearing Date,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My information

a. My name is: _____

I am the
- ☐ petitioner (educational institution officer or employee).
- ☐ respondent (restrained party).

b. Address where I can receive mail:

If you have a lawyer, give your lawyer's address and contact information. This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission.

Address: _____

City: _____ State: ___ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's information *(skip if you do not have one)*:

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court hearing currently scheduled for *(date)*: _____

3 Is There a Temporary Restraining Order in Effect?

- ☐ Yes. Date the order was made, if known: _____
  Please attach a copy of the order if you have one.
- ☐ No.
- ☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form SV-110) will remain in effect until the end of the new hearing unless otherwise ordered by the court.

This is not a Court Order.

Case Number:

4 Why Does the Court Hearing Need to be Rescheduled?

a. ☐ I need more time to have the respondent (restrained party) personally served.

b. ☐ I am the respondent (restrained party) and this is my first request to reschedule the hearing.

c. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case (for example, the next court date, charges, case number, arrest date). _____

_____

_____

d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain: _____

_____

e. ☐ Other reason: _____

_____

_____

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

SV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 3/27/2019

Complete items (1) and (2) only.

(1) Petitioner (Educational Institution Officer or Employee): _____

(2) Respondent: _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any *Temporary Restraining Orders* (form SV-110) previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a(2).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below. See additional orders in (4)-(8).

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

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ The *Temporary Restraining Order* (form SV-110) is EXTENDED. The orders listed in form SV-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ The Temporary Restraining Order is MODIFIED. The court signed a new *Temporary Restraining Order* (form SV-110). The new orders expire at the end of the hearing on *(date):* _____.

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 4d.

_____

_____

e. ☐ Other *(specify):* _____

Warning and Notice to the Restrained Party

If (4)b or c is checked, a Temporary Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

Case Number:

5 Reason to Reschedule Hearing

a. ☐ The respondent (restrained party) has not been served.

b. ☐ The respondent (restrained party) asked for a first continuance of the hearing.

c. ☐ The respondent (restrained party) has a pending criminal case related to this case.

d. ☐ The party wanting a continuance needs more time to hire a lawyer or prepare for the hearing or trial.

e. ☐ The court finds good cause and orders a continuance in its discretion.

f. ☐ Other good cause:

_____

_____

☐ See Attachment 5f.

6 Service of Order

(Check at least one.)

a. ☐ Respondent was at the court hearing. Further service of this order is not required for enforcement purposes.

b. ☐ Respondent agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.

c. ☐ The request to continue hearing is being made by the repondent.

(1) Further service of this order is not required for enforcement purposes.

(2) ☐ Respondent must have the petitioner served with a copy of this order no later than *(date):* _____ .

d. ☐ The restrained party MUST be personally served with a copy of this order and a copy of all the documents indicated on form SV-109, *Notice of Court Hearing*, item 6, no later than *(date):* _____.

e. ☐ Other _____

_____

_____

_____

☐ See Attachment 6e.

This is a Court Order.

Case Number:

7 ☐ **Other Orders**:

_____

_____

_____

_____

8 **No Fee to Serve (Notify) Restrained Person** ☐ **Ordered** ☐ **Not Ordered**

The sheriff or marshal will serve this Order without charge (fee) because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in **1** is entitled to a fee waiver.

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.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the date the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order)* (CLETS-TSV) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

WV-115 Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

03-27-19

Not approved by the Judicial Council

Instructions: Use this form to ask the court to change the hearing date listed on form WV-109, *Notice of Court Hearing*. Read WV-115-INFO, *How to Ask for a New Hearing Date,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

I am the ☐ petitioner (employer).
☐ respondent (restrained party).

b. Address where I can receive mail:

If you have a lawyer, give your lawyer's address and contact information. This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission.

Address: _____

City: _____ State: ___ Zip: _____

c. My contact information *(optional)*:

Telephone: _____ Fax: _____

E-Mail Address: _____

d. Lawyer's Information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court hearing currently scheduled for *(date)*: _____

3 Is There a Temporary Restraining Order in Effect?

☐ Yes. Date the order was made, if known: _____
Please attach a copy of the order if you have one.

☐ No.

☐ I don't know.

Notice: If the hearing date is rescheduled, the *Temporary Restraining Order* (form WV-110) will remain in effect until the end of the new hearing unless otherwise ordered by the court.

This is not a Court Order.

Case Number:

4 Why Does the Court Hearing Need to be Rescheduled?

a. ☐ I need more time to have the respondent (restrained party) personally served.

b. ☐ I am the respondent (restrained party), and this is my first request to reschedule the hearing.

c. ☐ I have a pending criminal case that is based on the same allegations in this case.
Give any information you have about your criminal case for example the next court date, charges, case number, arrest date. _____

_____

_____

d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
Explain: _____

_____

e. ☐ Other reason: _____

_____

_____

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

WV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 3/27/2019

Complete items (1) and (2) only.

(1) Petitioner (Employer): _____

(2) Respondent: _____

(3) Court Order

a. ☐ The hearing is NOT rescheduled. The court hearing will be on *(date):* _____

(1) Any *Temporary Restraining Orders* (form WV-110) previously issued remain in full force and effect.

(2) The hearing is not rescheduled because: _____

_____

_____

_____

☐ See Attachment 3a(2).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. ☐ The hearing is rescheduled for the day and time listed below. See additional orders in (4)-(8).

New Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ The *Temporary Restraining Order* (form WV-110) is EXTENDED. The orders listed in form WV-110, issued on *(date):* _____, expire at the end of the hearing on *(date):* _____.

c. ☐ The Temporary Restraining Order is MODIFIED. The court signed a new *Temporary Restraining Order* (form WV-110). The new orders expire at the end of the hearing on *(date):* _____ .

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 4d.

_____

_____

e. ☐ Other *(specify):* _____

Warning and Notice to the Restrained Party

If (4)b or c is checked, a Temporary Restraining Order has been issued against you. You must follow the orders until they expire.

This is a Court Order.

5 Reason to Reschedule Hearing

a. ☐ The respondent (restrained party) has not been served.

b. ☐ The respondent (restrained party) asked for a first continuance of the hearing.

c. ☐ The respondent (restrained party) has a pending criminal case related to this case.

d. ☐ The party wanting a continuance needs more time to hire a lawyer or prepare for the hearing or trial.

e. ☐ The court finds good cause and orders a continuance in its discretion.

f. ☐ Other good cause:

_____

_____

☐ See Attachment 5f.

6 Service of Order

(Check at least one.)

a. ☐ Respondent was at the court hearing. Further service of this order is not required for enforcement purposes.

b. ☐ Respondent agreed (stipulated) to this order. Further service of this order is not required for enforcement purposes.

c. ☐ The request to continue hearing is being made by the repondent.

(1) Further service of this order is not required for enforcement purposes.

(2) ☐ Respondent must have the petitioner served with a copy of this order no later than *(date):* _____ .

d. ☐ The restrained party MUST be personally served with a copy of this order and a copy of all the documents indicated on form WV-109, *Notice of Court Hearing*, item 6 , no later than *(date):* _____ .

e. ☐ Other : _____

_____

_____

_____

☐ See Attachment 6e.

This is a Court Order.

Case Number:

7 ☐ **Other Orders**:

_____

_____

_____

_____

8 **No Fee to Serve (Notify) Restrained Person** ☐ **Ordered** ☐ **Not Ordered**

The sheriff or marshal will serve this Order without charge (fee) because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in **1** is entitled to a fee waiver.

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.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled, the court is required to enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the date the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order)* (CLETS-TWH) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Item number: 46

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: New INFO Form on Protecting Minor's Information (approve forms CH-160-INFO and DV 160 INFO)

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

Staff contact (name, phone and e-mail): Kristi Morioka, 916-643-7056, kristi.morioka@jud.ca.gov
Frances Ho, 415-865-7662, frances.ho@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 10/19/2018
Project description from annual agenda: Civil and Small Claims - Item 15. Privacy of Minor's Information in Protective Orders (with Joint Protective Order Working Group). Family and Juvenile - Item 14. Privacy of Minor's Information in Protective Orders

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-46

Title
Protective Orders: New INFO Form on Protecting Minor's Information

Proposed Rules, Forms, Standards, or Statutes
Approve forms CH-160-INFO and DV-160-INFO

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

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

Action Requested
Review and submit comments by June 10, 2019.

Proposed Effective Date
January 1, 2020

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov
Kristi Morioka, 916-643-7056
kristi.morioka@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee and Civil and Small Claims Advisory Committee jointly recommend adopting two information sheets to help litigants understand a new law that enables courts to make confidential certain information regarding a minor in civil harassment and domestic violence restraining order proceedings. The new law went into effect on January 1, 2018, under Assembly Bill 953 (Stats. 2017, ch. 384).

Background

Assembly Bill 953 added section 6301.5 to the Family Code and amended section 527.6(v) of the Code of Civil Procedure. Under the new law, a minor or minor's legal guardian may ask the court to make information relating to a minor confidential when issuing a domestic violence or civil harassment restraining order. In 2018, the Judicial Council approved a proposal to implement the new law by adopting rules 3.1161 and 5.382 of the California Rules of Court and eight new forms (a set of four in the DV series and a set of four in the CH series), effective January 1, 2019. During the comment period, a commenter suggested that an information sheet be created to provide information regarding this new law. The committees agreed and responded that an information sheet would be proposed in a future cycle to allow for public comment.

The Proposal

To implement AB 953, the committees propose adopting two INFO sheets, *Privacy Protection for a Minor* (form CH-160-INFO) in the Civil Harassment Prevention series and *Privacy Protection for a Minor* (form DV-160-INFO) in the Domestic Violence Prevention series.

The INFO sheets would provide litigants interested in making these requests with a high-level overview of the law and process. The committees believe that INFO sheets are needed because most litigants in these proceedings are self-represented and this new law is fairly complicated. Providing information would advance the Judicial Council's goal of providing more access to the court system.

The following information is provided on the INFO sheets:

- What the court can do to protect information regarding a minor;
- What information can be made confidential;
- Who is eligible to make this type of request;
- Whether court fees apply for this type of request;
- Tips for completing the forms;
- The effect of an approval or denial of a request for confidentiality;
- Information on how to request a disability accommodation and language interpreter; and
- Referrals to other resources, such as national hotlines.

Differences between form CH-160-INFO and form DV-160-INFO

The proposed two INFO sheets have identical content, except for form numbers, references to form numbers, information on filing fees, and outside agencies listed as resources.[1]

Unlike Domestic Violence proceedings, Civil Harassment proceedings require a filing fee unless the person qualifies for an income-based fee waiver[2] or the allegations include violence, threats of violence, stalking, or any event that placed the moving party in reasonable fear of violence.[3] Information regarding fees is on page 1 of both forms.

Several of the INFO forms in the Domestic Violence Prevention series provide information for the National Domestic Violence Hotline, as does the Judicial Council's website. The committees believe this information is important to include as a resource on DV-160-INFO, especially for individuals whose requests are denied. The hotline provides support for domestic violence victims 24 hours a day, seven days a week, including an advocate to speak to about safety

[1] These resources are listed in the "Other help" section of the forms.

[2] Individuals who submit a completed *Request to Waive Court Fees* (form FW-001) and qualify for a fee waiver based on Government Code sections 68630–68641.

[3] Code Civ. Proc., § 527.6(y).

planning.[4] On form CH-160-INFO, the committees recommend including the contact information for the National Sexual Assault Hotline, National Human Trafficking Hotline, and stalking hotline of the VictimConnect Resource Center (a program of the National Center for Victims of Crime), because these resources are more likely to be used by minors involved in these case types.

Alternatives Considered

The advisory committees considered including more detailed information regarding the process of keeping information confidential but did not include this detail because the process will vary by court. Instead, the committees decided to refer litigants to their local self-help centers for help if a litigant is ordered by the court to prepare redacted documents.

Fiscal and Operational Impacts

The advisory committees anticipate that any cost associated with implementation (e.g., printing costs) would be offset by cost savings associated with providing more readily available information for self-represented litigants.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the forms easy for users to understand?
- Do you have any suggestions for improving their usability or readability?
- Should other information be included on the INFO sheets?
- Should other resources be listed in the "Other help" section, on page 2?

Attachments and Links

1. Proposed forms CH-160-INFO and DV-160-INFO, at pages 4–7
2. Link A: Assembly Bill 953, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB953*

[4] The National Domestic Violence Hotline, "What to Expect When You Contact the Hotline," *www.thehotline.org/help/what-to-expect-when-you-contact-the-hotline/* (as of Mar. 6, 2019).

CH-160-INFO Privacy Protection for a Minor (Person Less Than 18 Years Old)

Can I protect information about a minor?

A judge can make information about a minor confidential. Confidential means that the public is unable to see the information. Most paperwork in your court case is open to the public; this means anyone can go to the courthouse and request to see your case file. If there is sensitive information about a minor and you do not want the public to see it, you can ask a judge to make the information confidential.

This protection can be requested for any minor who is involved in a civil harassment restraining order case (examples: protected by restraining order, witness in the case, responding to a restraining order requested against them).

What information can be made confidential?

Any information about a minor can be made confidential, for example, the minor's name, address, or any statements about how the minor was abused or witnessed abuse. If you want only the minor's address to be made confidential, you do not have to make this type of request if you have a mailing address you can use (somewhere you can receive mail like a P.O. box or someone else's address if you have their permission to use it). Make sure you will get your mail in a timely manner because this is the address the court and the other party will use to send you papers for your case.

Does this request cost money?

That depends on the type of harassment. If the restrained person has used or threatened to use violence against you or has stalked you, you do not have to pay a filing fee; otherwise, you must pay the fee.

If you cannot afford to pay the filing fee, ask the clerk how to apply for a fee waiver. Form FW-001 is available for this purpose.

If the order is based on prior acts of violence, a credible threat of violence, or stalking, you are entitled to free service of the order by a sheriff or marshal. Also, if you are eligible for a fee waiver, you can ask the sheriff or marshal to serve the order for free. If you are not eligible for free service, you may pay the sheriff or marshal to serve the order.

Who can make the request?

A minor's legal guardian or a minor. Sometimes a minor can make this request, without the help of an adult. This depends on the minor's age. If the minor is under 12 years old, the judge may want an adult to help the minor with this request. For more information on who can make the request, contact your local self-help center or a lawyer.

What do I have to do to make information about a minor confidential?

1. Complete the forms	2. Take the forms to court	3. Understand the judge's order
		
You will need to complete: Form CH -160 Form CH-165 *(items 1 & 2 only)* You can get these forms online at: www.courts.ca.gov/forms See the next page for tips on completing the forms.	Find out which courthouse to take your forms to by calling your local court or online at www.courts.ca.gov/find-my-court.htm. In most cases, you will not have to testify because the judge will make a decision on your request based on the forms you turn in.	The judge's orders will be written on form CH-165. The judge will **approve** or **deny** (not approve) your request, see the next page for what this means.

CH-160-INFO Privacy Protection for a Minor (Person Less Than 18 Years Old)

Tips to Complete Forms

Protecting my address: If you are asking to protect only your address, you may not need to make this request. You can use a mailing address on all your court forms, like a P.O. box or the address of someone else who has given you permission to use the address.

My right to cancel restraining order: If the judge does not approve your request to keep certain information confidential, you have the right to cancel your request for restraining order. If you want to do so, make sure you check the boxes on form CH-160, items 7(a) and 8(d)(1), if it applies.

Protecting multiple minors: Only the minors' legal guardian can make a request to protect the information for multiple minors. If you are a minor, you can make this request only for yourself.

What if I need an interpreter or disability accommodation?

Language interpreter: You may use form INT-300, *Request for Interpreter (Civil),* to request an interpreter. Ask court staff for more information.
Disability accommodation: You may use form MC-410, *Request for Accommodations by Persons with Disabilities and Response*, to request accommodations. Use this form to request a sign language interpreter or assistive listening device. If you have questions, you may contact the disability/ADA coordinator at your local court.

Do I need a lawyer?

No, but this type of request can be hard to get through on your own. Free help may be available at your local court's self-help center or legal aid office.

Self-help center

Centers are located in every county and provide free legal information. You can find your local court's self-help center at www.courts.ca.gov/selfhelp-selfhelpcenters.htm.

Understand the Judge's Order

Look at form CH-165 to see what the judge ordered.

What if the judge approved (granted) my request?

Look closely at form CH-165 on pages 2 - 5 to see exactly what information the judge made confidential in your case. If all the information you requested to be confidential was approved by the judge, then this information will not be available to the public and will be available only to the parties in the case. In limited situations, the judge may make information confidential from the other party in your case. Take a close look at item 10 on form CH-165. This will tell you who is responsible for redacting the information and when it should be done by (deadline). Redacting means to hide (blacken out) the information so it cannot be seen.

Penalty for disclosing protected information

Information made confidential may be given to police only to help enforce the order. Misusing or giving out the information can result in a fine of up to $1,000 or other court penalties.

What if the judge denied (did not approve) my request?

It means that if you move forward with this case, information will NOT be confidential. This means that anyone can go to your local courthouse and ask to see the documents you filed in this case.

If you asked to cancel your request for the restraining order in the event your request to make information confidential was denied then, the paperwork you turned in with this request will NOT be available to the public except for page 1 of form CH-165.

Other help

For safety tips or other help, call the following hotlines:
National Human Trafficking Hotline:
1-888-373-7888; TTY: 711;
https://humantraffickinghotline.org
National Sexual Assault Hotline: 1-800-656-HOPE;
www.rainn.org
Stalking hotline: 1- 855-4-VICTIM
https://victimconnect.org/statistics/stalking

DV-160-INFO Privacy Protection for a Minor (Person Less Than 18 Years Old)

Can I protect information about a minor?

A judge can make information about a minor confidential in a domestic violence restraining order case. Confidential means that the public is unable to see the information. Most paperwork in your court case is open to the public; this means anyone can go to the courthouse and request to see your case file. If there is sensitive information about a minor and you do not want the public to see if you can ask a judge to make the information confidential. This protection can be requested for any minor who is involved in a domestic violence restraining order case (examples: protected by restraining order, witness in the case, responding to a restraining order requested against them).

Does this request cost money?

No, there are no court fees.

Who can make the request?

A minor's parent/legal guardian or a minor can make this request. Sometimes a minor can make this request on their own, without the help of an adult. This will depend on the minor's age. If the minor is under 12 years old, the judge may want an adult to help the minor with this request. For more information on who can make the request, contact your local self-help center or a lawyer.

What information can be made confidential?

Any information about a minor can be made confidential, for example, the minor's name, address, or any statements about how the minor was abused or witnessed abuse. If you want only the minor's address to be made confidential, you do not have to make this type of request if you have a mailing address you can use (somewhere you can receive mail like a P.O. box or someone else's address if you have their permission to use it). Make sure you will get your mail in a timely manner because this is the address the court and other party will use to send you papers for your case.

What do I have to do to make information about a minor confidential?

1. Complete the forms	2. Take the forms to court	3. Understand the judge's order
		
You will need to complete: Form DV-160 Form DV-165 *(items 1 & 2 only)* You can get these forms online at www.courts.ca.gov/forms. See the next page for tips on completing the forms.	Find out which courthouse to take your forms to by calling your local court or online at www.courts.ca.gov/find-my-court.htm. In most cases, you will not have to testify because the judge will make a decision on your request based on the forms you turn in.	The judge's orders will be written on form DV-165. The judge will **approve** or **deny** (not approve) your request, see the next page for what this means.

DV-160-INFO Privacy Protection for a Minor (Person Less Than 18 Years Old)

Tips to complete forms

Protecting my address: If you are asking to protect only your address, you may not need to make this request. You can use another address where you can receive mail on all your court forms, like a P.O. box or the address of someone else who has given you permission to use their address.

My right to cancel restraining order: If the judge does not approve your request to keep certain information confidential, you have the right to cancel your request for restraining order. If you want to do so make sure you check the box on form DV-160, item 7(a) and DV-160, item 8(d)(1) if it applies.

Protecting multiple minors: Only an adult (the minors' parent/legal guardian) can make a request to protect the information for multiple minors. If you are a minor, you can make this request only for yourself.

What if I need an interpreter or disability accommodation?

Language interpreter: You may use **form INT-300**, *Request for Interpreter (Civil)*, to request an interpreter. Ask court staff for more information.
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No, but this type of request can be hard to get through on your own. Free help may be available at your local court's self-help center or legal aid office.

Self-help center

Centers are located in every county and provide free legal information. Find out where your local court's self-help center at www.courts.ca.gov/selfhelp.

Understand the Judge's Order

Look at form DV-165 to see what the judge ordered.

What if the judge approved (granted) my request?
Look closely at form DV-165 on pages 2 - 5 to see exactly what information the judge made confidential in your case. If all the information you requested to be confidential was approved by the judge, then this information will not be available to the public and will only be available to the parties in the case. In limited situations, the judge may make information confidential from the other party in your case.

Take a close look at form DV-165, item 10. This will tell you who is responsible for redacting the information and when it should be done by (deadline). Redacting means to hide (blacken out) the information so it cannot be seen. If the judge makes you responsible for redacting all the paperwork, your local self-help center may be able to help you.

Penalty for disclosing protected information
Information made confidential may be given to police only to help enforce the order. Misusing or giving out the information can result in a fine of up to $1,000 or other court penalties.

What if the judge denied (did not approve) my request?
It means that if you move forward with this case, information will NOT be confidential. This means that anyone can go to your local courthouse and ask to see the documents you filed in this case. If you asked to cancel your request for the restraining order in the event your request to make information confidential was denied, then the paperwork you turned in with this request will NOT be available to the public except for page 1 of form DV-165.

Other help

For safety tips or other help, call the National Domestic Violence Hotline:
1-800-799-7233; TDD: 1-800-787-3224 (TTY)
It's free and private. They can help you in more than 100 languages.

Item number:47

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Alternative Service in Domestic Violence Prevention Act cases

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

Staff contact (name, phone and e-mail): Frances Ho; 415- 865-7662; frances.ho@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: on October 19, 2018

Project description from annual agenda: Item 1(a):
Domestic Violence: a. AB 2694 (Rubio) Domestic violence: ex parte orders (Ch. 219, Statutes of 2018) Prohibits denial of an ex parte petition under the Domestic Violence Prevention Act (DVPA) solely because the other party was not provided with notice of the proceeding.

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

SPR19-47

Title
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases

Proposed Rules, Forms, Standards, or Statutes
Adopt form DV-210; approve form DV-205-INFO; revise form DV-200-INFO

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

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends adopting one form, approving one information sheet, and revising one information sheet to implement the provisions in Assembly Bill 2694 (Stats. 2018, ch. 219). The bill allows for alternative service for domestic violence restraining order requests when, after diligent efforts, personal service has not been accomplished and there is reason to believe that the person to be served is evading service.

Background

AB 2694 added section 6340(a)(2) to the Family Code, effective January 1, 2019. Under the new law, a person seeking a domestic violence restraining order may request to serve the other party by a method other than personal service (i.e., alternative service) if diligent efforts to serve the order by personal service have failed and there is reason to believe that the person to be restrained is evading service. The court, in its discretion, may permit alternative service that is "designed to give reasonable notice of the action to the respondent," such as substituted service or publication. (Fam. Code, § 6340(a)(2)(A).)

The Proposal

The committee recommends adopting one form, approving one form, and revising one form to implement AB 2694.[1]

Adopt form DV-210, *Summons (Domestic Violence Restraining Order)*

This form would serve as the summons that would be used when the court permits a method of alternative service that requires service of a summons. The goal of the summons is to stress to the person to be restrained the importance of acting on a request for restraining order either by going to the scheduled court hearing or going to the courthouse to find out more information about the request for restraining order. To this end, the summons includes:

- The name of the person requesting the restraining order;
- Information on what can happen if the person to be restrained does NOT go to the court hearing;
- The statement, "Having a restraining order against you may affect your life, including preventing you from having guns and ammunition";
- Where to go to see the request for restraining order;
- Where to go to get help; and
- When and where to go for the court hearing.

Code of Civil Procedure section 412.20 requires that a summons contain specific elements, including what would happen if the "defendant" (in this case the person to be restrained) does nothing in an action brought against them. No other form in the Domestic Violence Prevention (DV) series could be used as a summons and comply with the code requirements. In addition, other forms in the DV series contain more information than what is needed for a summons, as defined by the code, such as the address for the person requesting the restraining order. Including additional information raises potential safety issues for the person seeking the restraining order if, for example, the information were widely distributed, such as posted in a courthouse or published in a newspaper.

Form DV-210 is designed to comply with section 412.20 by giving the person to be restrained the necessary information to act, should they choose to, while excluding sensitive information that is not required.

Approve new INFO sheet

New form DV-205-INFO, *What if the Person I Want Protection From Is Avoiding (Evading) Service?*, would give the moving party in a domestic violence restraining order case information on the availability of alternative service, including:

- The type of service generally required for the court to issue a restraining order after hearing;

[1] The committee also recommends revisions to forms DV-115 and DV-116, which are provided in a separate proposal called, "Protective Orders: Revisions to Continuance Forms."

- The minimum information the litigant needs to provide the court to be eligible for an alternative method of service; and
- Some examples of alternative methods of service.

Revise form DV-200-INFO

To comply with AB 2694, this information sheet needs to be revised to include alternative service as an option. Currently, the form states that personal service is required for all cases. The revised version would state that, although in most cases personal service would be required, in some cases alternative service may be allowed.

In addition to changing the service requirement, the committee also recommends:

- Including graphics to represent key concepts, like personal service and law enforcement;
- Using plain language;
- Reorganizing content so that litigants understand the steps involved in providing a proof of service to the court;
- Including an advisement on possible safety issues that could be present at the time of service; and
- Renaming the section "How does the server 'serve' the legal papers?" to "Instructions for Server."

The revisions are recommended to improve the usability of the form.

Alternatives Considered

The committee considered not creating a summons form but rejected this because no current form complies with Code of Civil Procedure section 412.20 that could be used in domestic violence restraining order cases.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, the committee also anticipates that the proposal will result in cost savings by creating a new summons form that would otherwise have to be created by local courts to use if publication or posting is ordered. The new information sheet (form DV-205-INFO) could also create cost savings by providing self-help centers and court staff with a tool to assist self-represented litigants.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the forms easy for users, especially self-represented litigants, to understand?
- Do you have any suggestions for improving their usability or readability?
- Should other information be included on the new forms (DV-205-INFO and DV-210)?

The advisory committee 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 DV-210, DV-205-INFO, and DV-200-INFO, at pages 5–11
2. Assem. Bill 2694, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2694*

DV-210 Summons (Domestic Violence Restraining Order)
Citación (Orden de restricción de violencia en el hogar)

Complete items (1), and (2) only. Llene los puntos (1) y (2) solamente.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT 3.20.19

NOT APPROVED BY THE JUDICIAL COUNCIL

Superior Court of California, County of
Corte Superior de California, Condado de

Case Number:
Número de caso:

(1) Person asking for protection:
La persona que solicita protección:

(2) NOTICE TO *(name of person to be restrained)*:
AVISO A *(nombre de la persona a ser restringida):*

- **The person in (1) is asking for a Domestic Violence Restraining Order against you.**

  La persona en (1) está pidiendo una orden de restricción de violencia en el hogar contra usted. Lea la página 2 para más información.

- If you do NOT want a restraining order against you, you must go to your court hearing. If you do not go to your court hearing, the judge can make the orders the person in (1) is asking for without you there. See (3) for when your court hearing is.
- Having a restraining order against you may impact your life, including preventing you from having guns and ammunition. If you have a child with the person in (1), the court could make orders that limit your time with your child.
- To find out what the person in (1) is asking the judge to order and if there is a temporary restraining order against you right now, go to the courthouse and ask to see your case file. The request for restraining order will be on form DV-100, *Request for Domestic Violence Restraining Order*. Your case number is listed above.
- Free legal information is available at your local court's self-help center. Go to www.courts.ca.gov/selfhelp to find your local center.
- You are not required to have a lawyer, but you may want legal advice before your court hearing. For help finding a lawyer, you can visit www.lawhelpca.org or contact your local bar association.[*Spanish translation will be on page 2]*

— The court will complete the rest of this form —
— El tribunal llenará el resto de este formulario —

(3) Your Court Hearing
Su Audiencia

Date *Fecha*: _____
Time *Hora*: _____
Dept. *Depto.*: _____
Room *Sala*: _____

Name and address of court, if different from above:
Nombre y dirección de la corte, si no es la misma de arriba:
_____
_____
_____

[seal]
[sello]

Date (*Fecha*): _____ Clerk, by *(Secretario, por)*: _____, Deputy (*Asistente*)

Citación (Orden de restricción de violencia en el hogar)

[Content translated into Spanish to be added here]

DV-205-INFO What if the Person I Want Protection From is Avoiding (Evading) Service?

Why do I have to serve the other party?

Before a judge can grant a domestic violence restraining order (that can last up to five years), the person you want a restraining order against must know about your request and have a chance to go to court to explain their side. In most cases, the judge will require that you have someone personally deliver the papers to the person you want restrained—called personal service. See form DV-200-INFO, *What Is "Proof of Personal Service*," for more information.

Am I eligible to serve in another way?

In some cases, a judge may allow you to give (serve) the restraining order paperwork another way—called alternative service. To be eligible for alternative service, you must show the judge at least two things:

1. You have tried many times to have someone personally serve the restrained person.	Some examples of things you can try: • Serve the restrained person at home, the workplace, or somewhere the restrained party goes a lot, • Search online for whereabouts, • Check with the restrained person's family and friends. ⚠ Make sure any attempts to find the restrained person are done safely. If you have an address for the restrained person, you can ask the sheriff or marshal to serve the papers, and they will do it for free.
2. You believe the restrained person is avoiding (evading) service.	Be ready to explain why you think the restrained person is avoiding service. If you have people who will help you prove this to the judge, bring them to your court hearing or have them write a statement that describes what they witnessed. Form MC-030 may be used for this purpose.

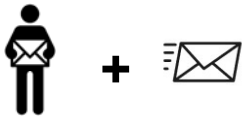
How do I make a request for alternative service?

If you believe you are eligible for alternative service, you can complete form DV-115, *Request to Continue Hearing*, to make this request. You will have to go to your court hearing so the judge can make a decision on your request. Alternative service may involve third parties seeing your name, the fact that you want a restraining order against the other party, and possibly your statements regarding the abuse. You may want to talk to an advocate about your safety and privacy concerns before you consider this request. For safety tips or other help, call the National Domestic Violence Hotline at **1-800-799-7233; TDD: 1-800-787-3224.**

What are some examples of alternative service?

Here are some examples of what a judge can order if the judge allows alternative service in your case. A judge could order you to serve the restrained person in more than one way.

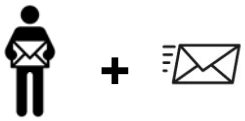
Leave a copy and mail a copy to the restrained person's home or mailing address *(known as "substituted service")*



If you have the restrained person's home or mailing address (cannot be a PO box), this type of service requires your server (an adult not protected by the restraining order) to follow these steps:

1. Leave paperwork with someone 18 years or older (adult) who lives there;
2. Get the name of the adult who got the paperwork, and tell the adult that the paperwork is for a request for a restraining order against the restrained person;
3. Mail the paperwork to the restrained person's home or mailing address; and
4. Completely fill out form POS-010, *Proof of Service of Summons;* and
5. File form POS-010 with the court or give the completed form to the person asking for the restraining order so they can file it with the court.

Leave a copy and mail a copy to the restrained person's workplace *(known as "substituted service")*



If you know where the restrained person works, this type of service requires your server (an adult not protected by the restraining order) to follow these steps:

1. Give paperwork to someone who seems to be in charge at the restrained person's workplace;
2. Get the name of the person who got the paperwork;
3. Mail the paperwork to the restrained person at the address of the workplace;
4. Completely fill out form POS-010, *Proof of Service of Summons;* and
5. File form POS-010 with the court or give the completed form to the person asking for the restraining order so they can file it with the court.

Publish in a Newspaper

You would have to pay a newspaper to run a copy of form DV-210, *Summons* (*Domestic Violence Restraining Order)*, at least once a week for at least four weeks in a row. The judge would approve a newspaper that would have the best chances of the restrained person seeing it. To make this request, complete form FL-980, *Application for Order for Publication or Posting*, and items 1 and 2 on form DV-210, and file them with the court. If the judge approves your request, follow the orders made by the judge. Usually these orders are made on form FL-982, *Order for Publication or Posting*. After the newspaper publishes form DV-210, make sure you get a signed statement from the newspaper that includes a copy of what was published in the paper and when it was published. This statement is usually called, "Proof of Publication." After you receive this statement, take it to the courthouse to file in your case.

Post in courthouse

If you do not have money to pay a newspaper to publish, you could ask the judge for permission to post a copy of form DV-210, *Summons* (*Domestic Violence Restraining Order),* in a courthouse. To be eligible, you have to qualify for a fee waiver. If you are asking for permission to post, you must complete form FW-001, *Request to Waive Court Fees*, and take it to the courthouse to file in your case. If the judge allows you to serve the restrained person this way, you must find a server (an adult not protected by the restraining order) to post form DV-210 for you in the location approved by the judge. After it is posted, have your server completely fill out form FL-985, *Proof of Service by Posting*. Take form FL-985 to the courthouse to file in your case.

May I serve by e-mail or electronically?

To serve someone electronically, like by e-mail or text message, the person you are serving has to agree to being served electronically. In your situation, if the person is avoiding service, it is unlikely that they will agree to being served electronically. The judge could tell you to send your paperwork by e-mail or electronically to the restrained person as a way to give the restrained person notice, but the judge would also tell you to serve the restrained person in another way, like one of the examples listed above.

What if I already have a domestic violence restraining order?

If a judge has already granted you a domestic violence restraining order (signed form DV-130), you must follow the orders for service on form DV-130. It is important to follow the orders for service because this is how the restrained person will find out about the restraining orders. Once you file proof that the restrained person was served, law enforcement and the court will have proof that the restrained person knows about the orders. If you have questions on what the judge ordered in your case, see below for where to get legal help.

Find legal help

Free legal information is available in every county at a court self-help center. Staff can provide you with your legal options but will not tell you what you should do in your case and will not provide you with legal representation. To find out where your local self-help center is, go to www.courts.ca.gov/selfhelp. For legal advice, you can go to *www.lawhelpca.org* to search for free or low-cost legal services or contact your local bar association.

Find other help

For safety tips or other help, call the National Domestic Violence Hotline:
1-800-799-7233; TDD: 1-800-787-3224
It's free and private. They can help you in more than 100 languages.

DV-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your legal papers to the other party in the case. There are different ways to serve the other party—in person, by mail, and others.

Why do I have to get the orders served?

Before a judge can grant a domestic violence restraining order (that can last up to five years), the person you want a restraining order against must know what orders you are asking for and why you are asking for the orders. Also, if a restraining order is in place, the police cannot arrest the restrained person for violating the restraining order until the restrained person is served with the order.

What is "personal service"?

Personal service is when someone personally delivers your court papers to the other party.

In most cases, these forms must be served in-person:

- DV-109 *Notice of Court Hearing*,
- DV-100 *Request for Domestic Violence Restraining Order*, and
- DV-110 *Temporary Restraining Order*.

Who can serve?

Any adult who is not protected by the restraining order can serve your papers. For example, you cannot serve your restraining order.

Some situations may be dangerous. Think about people's safety when deciding who you want to serve your papers.

A sheriff or marshal will serve your restraining order for free. A "registered process server" is a business you pay to deliver papers. To hire a process server, look for "process server" on the internet or in the yellow pages.

Here are the steps:

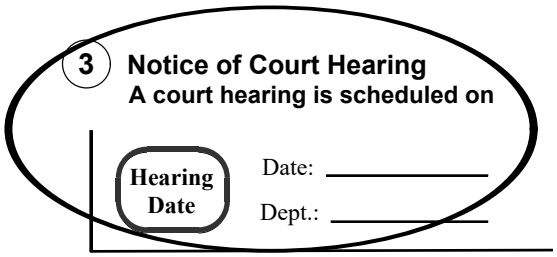
1. Choose a server	2. Have server give your papers to other party	3. File proof with the court
Once you have chosen someone, give them all the papers that need to be served (see form DV-109 for all the forms that need to be served). Let the server know the deadline to serve the papers. In most cases, service has to happen at least five days before your court hearing. Look on the next page for directions on how to figure out your deadline. If you want the sheriff or marshal to serve, ask court staff where to take your papers.	Instructions for the server are on the next page. Give your server a copy of the restrained person's picture, if you have one.	The court needs proof that service happened and that it was done correctly. If the server was successful, have the server fully complete and sign form DV-200 (Proof of Personal Service). Note: the person you want restrained does not sign anything. Take form DV-200 to the court to file in your case. It is best to do so as soon as possible. This information will also automatically go into a restraining order database that police have access to. If the sheriff or marshal served the papers they may use another form for proof. Make sure a copy is filed with the court and that you get a copy.

DV-200-INFO What Is "Proof of Personal Service"?

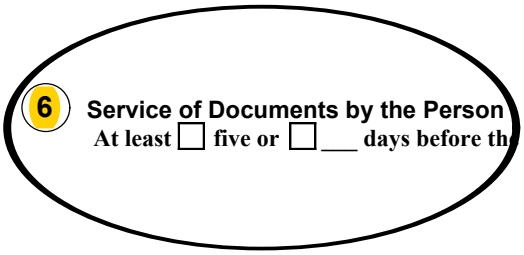
When is the deadline to serve the papers?

It depends. To know the exact date, you have to look at two things on form DV-109:

First, look at the hearing date on page 1.



Next, look at the number of days written in item 6 on page 2.



Look at a calendar. Subtract the number of days in item 6 from the hearing date. That's the final date to have the orders served. It's always OK to serve earlier than that date.

If nothing is written in item 6, you must have the papers served at least five days before the hearing.

What happens if I cannot get the papers served before the hearing date?

You will need to ask the court to reschedule (continue) your court hearing. Fill out and file form DV-115, *Request to Continue Hearing,* and form DV-116, *Order on Request to Continue Hearing*. These forms ask the judge for a new hearing date and to make any temporary orders last until the end of the new hearing. Ask the clerk for the forms, or go to *www.courts.ca.gov*.

If the judge gives you a new court date, the person you want restrained will have to be served with form DV-116, form DV-115 **and** the original papers you filed. You should attach a copy of form DV-115 and DV-116 to a copy of your original paperwork. That way, the police will know your orders are still in effect. For more information on getting a new hearing date, read form DV-115-INFO, *How to Ask for a New Hearing Date.*

What if the other person is avoiding service?

If you've tried many times to serve the other party and you can show the judge that the other party is avoiding (evading) service, you may ask the court to give you permission to serve another way. If you want to make this request, at your first hearing be prepared to give the judge details about attempts to serve the other party. The judge may require a written statement for this. Read form DV-205-INFO, *What if the Person I Want Protection From is Avoiding (Evading) Service?*, for more information.

Instructions for Server

- Before you serve the forms, note which forms you have (name of form/form number). See form DV-200, *Proof of Personal Service*, for a list of forms.
- Find the person you need to serve. Make sure you are serving the right person by asking the person's name.
- Give the person the papers.
- If the person refuses to take the papers put them on the ground or somewhere next to the person. The person doesn't have to touch or sign for the papers. It is okay if they tear them up.
- Fill out form DV-200, completely, and sign.
- File form DV-200 with the court or give form DV-200 to the person who is asking for the restraining order so it can be filed.

Item number: 48

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Language Access Plan: Language Services in Noncourtroom Settings
Adopt Cal. Rules of Court, rule 1.300; approve forms LA-350, LA-400, and LA 450

Committee or other entity submitting the proposal:
Advisory Committee on Providing Access & Fairness (PAF)

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 for Language Access Plan Implementation Task Force Annual Agenda: March 1, 2018
Approved by E&P for PAF Annual Agenda: March 13, 2019

Project description from annual agenda:
LAPITF 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.

PAF Annual Agenda:
Project Title: Language Access Rule of Court
Project Summary: Approve and recommend proposal to adopt new rule 1.300 and forms LA-350, LA-400, and LA-450 to provide guidance to the courts on the provision of language assistance in court-ordered programs and services. The Language Access Plan Implementation Task Force was the original proponent of this proposal, which was previously reviewed by the Committee. The proposal was submitted to the Rules and Projects Committee (RUPRO) by the Task Force and has been circulated for public comment. It now requires a final review and recommendation to RUPRO for presentation and request for final approval by the Judicial Council at its May 2019 meeting. Because the Task Force has sunsetted, the Advisory Committee on Providing Access and Fairness will take lead responsibility for this proposal as of March 1, 2019.

If requesting July 1 or out of cycle, explain:

N/A

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 16–17, 2019

Title
Language Access Plan: Language Services in Noncourtroom Settings

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450

Recommended by
Advisory Committee on Providing Access and Fairness
Hon. Kevin C. Brazile, Cochair
Hon. Laurie D. Zelon, Cochair

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
March 22, 2019

Contact
Diana B. Glick, 916-643-7012
diana.glick@jud.ca.gov

Executive Summary

The Advisory Committee on Providing Access and Fairness recommends the adoption of a new rule of court and three optional forms to satisfy a series of recommendations from the *Strategic Plan for Language Access in the California Courts* (LAP) focusing on the provision of language services outside the courtroom.

Recommendation

The Advisory Committee on Providing Access and Fairness recommends that the Judicial Council, effective September 1, 2019:

1. Adopt California Rules of Court, rule 1.300, titled "Access to programs, services, and professionals," to be located within a new chapter of title 1, "Language Access Services"; and

2. Approve *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), to be identified by a new forms category titled "Language Access," having the prefix LA.

The text of the new rule and the new forms are attached at pages 10–16.

Relevant Previous Council Action

The LAP was adopted by the Judicial Council on January 22, 2015. It provides a comprehensive and systematic approach to expanding language access in the California courts, consistent with title VI of the Civil Rights Act of 1964, and contains 75 recommendations for branchwide implementation to enhance language access for limited-English-proficient (LEP) court users.

Four LAP 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:

- 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 noncourtroom 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.

The council charged the Language Access Plan Implementation Task Force with overseeing and ensuring implementation of the plan.[2] As part of that effort, the task force was the original proponent of and developed this proposal; the task force concluded its work in March 2019. The

[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 referenced in the Advisory Committee comment in the proposed rule of court.

[2] Judicial Council of Cal., mins. (Jan. 22, 2015), p. 15, www.courts.ca.gov/documents/jc-20150122-minutes.pdf

Advisory Committee on Providing Access and Fairness succeeded the task force for purposes of this proposal and similar work.

Recent Case Law: Abuse of discretion in ordering parent to participate in programs without language access

In 2017, the Court of Appeal, Second Appellate District, Division Eight 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 and 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. The 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 the 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 him 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 the father was allowed supervised visitation only. The lower court found that DCFS had made reasonable efforts to reunify the father with his children, but that his 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." (*In re J.P., supra,* 14 Cal.App.5th 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.)

Analysis/Rationale

The advisory committee recommends the adoption of rule 1.300 (Access to programs, services, and professionals) and approval of three 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 rule of court 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.

New rule 1.300

The rule requires 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 discourages courts, to the extent feasible, from ordering an LEP litigant to access a private service or program that is not available in the litigant's language.

The rule authorizes 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 *Service Not Available in My Language: Request to Change Court Order* (form LA-400) to notify the court of the situation. In response, the court may modify its order or extend the deadline for compliance using *Service Not Available in My Language: Order* (form LA-450).

In addition, the rule encourages 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 *Notice of Available Language Assistance—Service Provider* (form LA-350).

The advisory committee recommends placing rule 1.300 in title 1 (Rules Applicable to All Courts). This title addresses issues such as court holidays, the filing of rules, and the format of papers and contains rules for public access to court proceedings and accommodations for disability. The committee recommends the addition of a new chapter (Language Access Services), which in addition to rule 1.300, would be appropriate for the placement of any future rules of court developed to address general issues related to language access that are applicable to all courts.

New forms and a Language Access forms category

The advisory committee further 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 optional forms in this recommendation are intentionally high enough (350–450) to allow for the transfer of INT forms into this series by simply changing the letters of their name from INT to LA:

- 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 on paper or electronically and allows the provider to indicate the types of services, languages offered, types of language assistance, and service area covered (usually a county or region). This 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 the need to connect an LEP court user with a court-ordered service arises.

- 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 completion.

- 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 service, which will allow the court to notify the applicant and other interested parties if it modifies the order or extends the deadline.

Comments

The proposal circulated for public comment from December 12, 2018, to February 12, 2019. A total of 47 comments were received, as follows:

- 25 comments from individuals
- 6 comments from American Sign Language (ASL) interpreters
- 5 comments from representatives of schools and universities
- 4 comments from individual service organizations for Deaf and hard of hearing persons
- 3 comments from superior courts
- 1 comment from 16 legal advocacy organizations
- 1 comment from 8 consumer groups representing deaf and hard of hearing Americans
- 1 comment from a legal advocacy organization for parents in dependency court
- 1 comment from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committees

Two major themes emerged from the comments. Many of the comments (41) focused on the importance of including interpreter services for Deaf and hard of hearing court users in the rule of court and in the process for collecting information about language assistance offered by private service providers. The commenters expressed that court users who rely on ASL interpreters to access court processes and services struggle to obtain the services of an interpreter in court-ordered programs such as parenting classes, anger management classes, and batterer intervention classes. The committee amended form LA-350 in response to these concerns. Further discussion of the intersections between language access protections in title VI and protections afforded under the Americans with Disabilities Act (ADA) is provided under "Policy implications," below.

Additional concerns about form LA-350 included the usability of both a paper and an electronic version of the form and the ability to indicate several languages and several types of services. Based on this feedback, the form was revised to eliminate the drop-down boxes (which did not work on the paper version of the form) and to replace them with a series of check boxes. The electronic version will allow for multiple items to be checked in each section, as appropriate. An "Other" option was added to each list, which allows for a free text entry for any selection not included in the lists.

Several commenters also expressed concerns regarding the challenge of communicating to LEP court users that they may use form LA-400 to notify the judge that a court-ordered service is not available in their language. Commenters recommended the inclusion of notices at different stages of a case and the translation of both form LA-400 and form LA-450. In its responses, the advisory committee recommended that courts provide copies of both forms to LEP litigants when a private service is ordered. In addition, the committee recommends the translation of both forms into the top eight languages in the state, in accordance with the Translation Protocol adopted by the Language Access Plan Implementation Task Force in July 2016.[3]

The superior courts that submitted comments provided helpful information regarding potential operational impacts and costs to the courts of establishing and maintaining a list of providers who offer language access services in conjunction with private court-ordered services.

The chart of comments and committee responses is attached at pages 17–54.

Policy implications

The *Strategic Plan for Language Access in the California Courts* envisions a state court system that provides equal access to the state courts for all Californians, regardless of language status, consistent with title VI of the Civil Rights Act of 1964 and Executive Order 13166. The federal Americans with Disabilities Act[4] prohibits discrimination against persons with disabilities in a variety of contexts, including access to public services. To avoid discrimination, the ADA

[3] The *Translation Protocol* is available at *www.courts.ca.gov/documents/lap-Translation-Protocol.pdfwww.courts.ca.gov/documents/lap-Translation-Protocol.pdf*.

[4] Americans with Disabilities Act of 1990, Pub.L. No. 101-336 (July 26, 1990) 104 Stat. 328.

requires public entities, including courts, to accommodate disabilities, including, when appropriate, the provision of American Sign Language interpreters.

The LAP addresses the intersection between services provided under title VI and those provided in compliance with the ADA as follows:

> The legal requirements relating to access for deaf or hard of hearing court users are governed by the Americans with Disabilities Act (ADA) and other relevant statutes. However, deaf or hard of hearing court users and their interpreters should be considered as part of any language access plan implementation whenever appropriate, by, for example, including deaf or hard of hearing court users and their interpreters on "I speak" cards or in centralized pilots. Provision of standards related to language access for deaf or hard of hearing court users will not be included in this plan since courts are already legally mandated to provide deaf or hard of hearing court users with disability and related language access (see ADA and section 504 of the Rehabilitation Act of 1973). Where access may not be provided to deaf or hard of hearing court users under the ADA, the courts will provide access as part of their compliance with this plan.[5]

The LAP makes clear that the setting of *standards* for ASL interpretation and other services for deaf or hard of hearing court users is not within the scope of the branch's language access implementation work. However, ASL interpretation should be considered during implementation efforts and included when appropriate in tools and resources designed to enhance language access. In addition, to the extent that ASL interpretation is not provided based on the requirements of the ADA, the *Strategic Plan* indicates that access for deaf or hard of hearing court users will be provided as part of a court's language access efforts.

Given this direction to include ASL interpretation services as part of language access implementation efforts, and to ensure access when services are not provided under the ADA, the advisory committee determined that the inclusion of American Sign Language as a language option on form LA-350 was appropriate, thus giving private providers the opportunity to notify the court that they make their services available to people who use ASL as their primary means of communication.

Alternatives considered

One alternative to this proposal would be not to develop a rule of court to address this issue; however, the advisory committee 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.*

The committee could have opted *not* to include American Sign Language as an option on form LA-350. However, doing so would have directly opposed the many comments received from the

[5] Judicial Council of Cal., *Strategic Plan for Language Access in the California Courts* (2015), p. 15, fn. 8.

public and the statement in the LAP directing the inclusion of ASL interpreting as part of language access efforts.

Another alternative would have been to implement a mandatory process for obtaining and maintaining information about local providers. However, local courts were determined to have a wide variety of approaches to this issue, including maintaining lists of private providers recommended by the court. Because local courts have varying approaches based on their size and local community resources, the committee decided to make the use of form LA-350 optional. The form and the maintenance of a list of private providers that offer language services is envisioned as a tool that may be used by courts as appropriate for the local environment.

The committee initially recommended circulation of a rule that would have had an implementation date of January 1, 2019. However, after input from numerous sources, including the JRS, the Advisory Committee on Providing Access and Fairness 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 copies it collects of *Notice of Available Language Assistance–Service Provider* (form LA-350). 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.

Attachments and Links

1. Cal. Rules of Court, rule 1.300, at pages 9–12
2. Forms LA-350, LA-400, and LA-450, at pages 13–15
3. Chart of comments, at pages 16–67
4. Attachment A: Full letters submitted as public comments, excerpted in comment chart
5. Link A: *Strategic Plan for Language Access in the California Courts*, www.courts.ca.gov/documents/CLASP_report_060514.pdf

Rule 1.300 of the California Rules of Court is adopted, effective September 1, 2019, to read:

Chapter 8. Language Access Services

Rule 1.300. Access to programs, services, and professionals

(a) Definitions

As used in this chapter, unless the context or subject matter otherwise requires, the following definitions apply:

(1) "Court-provided programs, services, and professionals" are services offered and provided by court employees or by contractors or vendors under agreement with the court.

(2) "Court litigant" is a person who is a party in a court case or other legal proceeding.

(3) "Language services" are services designed to provide access to the legal system to limited English proficient court litigants and may include in-person interpretation, telephonic interpreter services, video remote interpreting services, and services provided by assigned bilingual employees and bilingual volunteers.

(4) "Limited English proficient" describes a person who speaks English "less than very well" and who, as a result, cannot understand or participate in a court proceeding.

(5) "Private programs, services, and professionals" are services provided by outside agencies, organizations, and persons that court litigants may be required to access by court order.

(b) Provision of language services in court-ordered and court-provided programs, services, and professionals

As soon as feasible, each court must adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided programs, services, and professionals to the same extent as persons who are proficient in English.

(c) Provision of language services in private programs and services, and by private professionals

To the extent feasible, a court should avoid ordering a limited English proficient court litigant to a private program, service, or professional that is not language accessible.

(d) Delay in access to services

If a limited English proficient court litigant is unable to access a private program, service, or professional within the time period ordered by the court due to limitations in language service availability, the court litigant may submit a statement to the court indicating the reason for the delay, and the court may, for good cause, enter an alternative order or extend the time for completion. Court litigants may use *Service Not Available in My Language: Request to Change Court Order* (form LA-400) for this purpose. The court may respond to the request using *Service Not Available in My Language: Order* (form LA-450).

(e) Use of technology

Courts should seek out opportunities to collaborate with each other and with community partners in the provision of language services and should employ technology to promote the sharing of bilingual staff and certified and registered court interpreters among courts, as appropriate.

Advisory Committee Comment

Subdivision (b). The goal of this rule is to connect limited English proficient court litigants ordered by courts to access programs or professionals with services in the languages spoken by the litigants. Recognizing that not all program providers will be willing or able to meet the language needs, the rule is intended to help courts become aware of those language services available in the community so that limited English proficient court litigants are not placed in a position where they are unable to comply with court orders because the required services are not available in a language they understand.

To facilitate equal access to justice, when courts order limited English proficient litigants to access court-provided programs, services, and professionals, to the greatest extent possible, courts should ensure that the services are language accessible.

To the extent feasible and as permitted by law, any memorandum of understanding or other written agreement for agency-referred programs, services, and professionals that trial courts enter into or amend after the implementation date of this rule should include the goals of providing language services in the languages spoken by limited English proficient court users and of

notifying the court if the language needs of a limited English proficient court litigant referred to the program, service, or professional cannot be accommodated.

Subdivision (c). Courts are encouraged to offer neutral, nonendorsing information about private programs, services, and professionals providing multilingual services or language assistance to enable limited English proficient court litigants to access their programs. Private programs, services, and professionals that would like to be included on a court's informational list may confirm in writing to the court annually that they offer language services, indicating the languages covered by the program, service, or professional. Courts may require providers to use *Notice of Available Language Assistance—Service Provider* (form LA-350) for this purpose.

Subdivision (d). When a defendant is required to participate in a batterer intervention program under section 1203.097(a)(6) of the California Penal Code, the court may order "another appropriate counseling program" if a batterer's program is unavailable in the language spoken by the court litigant. In addition, a judge may, for good cause, excuse the requirement to complete the 52-week program within 18 months. The application of a similar standard to all orders to participate in noncourtroom services, whereby the unavailability of language assistance would constitute good cause to make an alternative order or to excuse delay in completion, would provide the court with flexibility to address situations in which a program or service is unavailable in the language spoken by a limited English proficient court user.

Two optional forms, *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), were developed to facilitate communication between the court and a limited English proficient court litigant who is unable to comply with a court order because of a lack of language assistance.

Form LA-400 allows the court litigant to notify the court of the unavailability of language assistance in a court-ordered program and to request a modified order or an extension of the time for completion of the program. Form LA-450 allows the court to issue a modified order or to extend the time for completion of a court-ordered program or service. A request may be denied if the court receives information that a program is available in the language of the court litigant or that language assistance is available to help the court litigant access the program, and that the program or service may be accessed within the time mandated by the court for completion. If a request is denied on this basis, the court should provide contact information that will allow the court litigant to access the program. In addition, a request may be denied if the court finds there is good cause to believe that the request was brought for an improper purpose or that the court litigant knowingly provided false information on form LA-400.

Subdivision (e). It is the policy of the California courts to encourage the efficient and effective use of human and technological resources in the provision of language services while ensuring meaningful access for limited English proficient court users. For noncourtroom interpretation events, courts may consult the report, *Technological Options for Providing and Sharing Court*

Language Access Services Outside the Courtroom (January 2018) for opportunities to collaborate with other courts and service providers to enhance language access for LEP court users.

LA-350 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.

Fill in court name and address:

Superior Court of California, County of

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. You may also submit this form to let the court know your services have changed.

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: ☐ Check here to attach a narrative description of the services offered.

Services (*select all that apply*)
☐ Mediation
☐ Child custody recommending counseling
☐ Professional supervised child visitation
☐ Parenting education classes
☐ Anger management classes
☐ Mental health counseling
☐ Batterer intervention--MEN
☐ Batterer intervention--WOMEN
☐ Alcohol/substance abuse treatment
☐ Other
Specify: _____

Languages Available (*select all that apply*)
☐ Any language
☐ American Sign Language
☐ Spanish
☐ Mandarin
☐ Cantonese
☐ Farsi
☐ Korean
☐ Punjabi
☐ Russian
☐ Tagalog
☐ Vietnamese
☐ Other
Specify: _____

Types of Language Assistance (*select all that apply*)
☐ Program offered directly in language
☐ In-person interpreter
☐ Telephone interpreter
☐ Translated materials
☐ Other
Specify: _____

Service Area
(county or region)

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

LA-400 Service Not Available in My Language: Request to Change Court Order

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*

LA-450 Service Not Available in My Language: Order

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: _____

Fill in court name and address:

Superior Court of California, County of

Case Number:

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:

_____

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 Service

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 causing the envelope to be deposited with the U.S. Postal Service with first-class postage fully prepaid

☐ sending a copy electronically from the following electronic service address: _____
to the electronic service address as shown below

on (*date*): _____ at (*city*): _____ , California.

APPLICANT *(name and mailing or electronic service address)*:	AGENCY, if applicable *(name and mailing or electronic service address)*:	OPPOSING PARTY *(name and mailing or electronic service address)*:

I certify that the foregoing is true and correct. Clerk, by _____, Deputy

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Language Access: Language Services in Non-courtroom Programs and Services (adopt Cal. Rule of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450)

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

	Commenter	Position	Comment	Committee Response
	Comments from Individuals			
1.	Steven Barnard		To those it concerns, it has been brought to my attention that there is a rule of court that is being considered to be put into action that is unfair and unjust to the Deaf community, it deserves an alternative wording. Specifically in section 1.300 portions C and D. This is unfair to Deaf people specifically because it is difficult to find court-ordered programs that are ASL based or willing to provide interpreters. The inequity of it stems in its limitations to the Deaf/Hard of Hearing individual, if a judge orders Deaf parents to take parenting classes and there are no classes available in ASL, Deaf parents must either pay for interpreters, sue the private program for ADA violations or risk court-ordered separation from their children. Alternatively if the court orders them to get Domestic Violence education, but no private program will provide certified interpreters or offer an ASL environment, then the Deaf person must either pay for interpreters or risk being jailed for not complying with the court order. Deaf people should be included in Rules of Court 1.300, particularly under (c) "…a court should avoid ordering a limited English proficient court litigant to a private program, service or professional that is not language accessible." And (d) The court may "enter an alternative order or extend time for completion." Please do not punish Deaf people because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	The committee appreciates this input. The Language Access Plan indicates that the "provision of standards related to language access for deaf or hard of hearing court users will not be included in this plan," but also calls for the inclusion of "deaf or hard of hearing court users and their interpreters" in plan implementation "whenever appropriate." Therefore, the committee has revamped the LA-350 to allow service providers to indicate whether they provide ASL as part of their language services.
2.	Rachel Blake		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			ordered programs that provide ASL access for Deaf people. My experience trying to get classes, workshops or public gatherings interpreted and accessed via ASL in general has always been difficult wherever and whenever I go. Imagine how much harder it must be to find access for very specific classes ordered by the court. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
3.	Ivonne Bogen		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide	See Committee Response to Comment 1 above.

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Language Access: Language Services in Non-courtroom Programs and Services (adopt Cal. Rule of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450)

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	Commenter	Position	Comment	Committee Response
			interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people	
4.	Robert Bogen		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people	See Committee Response to Comment 1 above.
5.	Tina Jo Breindel		Hi, as I just learned about this, I'd like to stress the importance regarding Deaf people in the non-courtroom programs proposal Rule 1.300. Please include the needs of Deaf people. Courts should maintain a list of court-ordered programs that provide access to American Sign Language (ASL) for Deaf people (like how it is dealt when people get a traffic ticket and they get a	See Committee Response to Comment 1 above.

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Language Access: Language Services in Non-courtroom Programs and Services (adopt Cal. Rule of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450)

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	Commenter	Position	Comment	Committee Response
			list of approved/certified traffic schools to attend in California). Even with the ADA and constitutional guarantees, too many Deaf people have their rights violated daily. They are denied access to certified sign language interpreters for court hearings, disciplinary meetings, or educational classes. There are numerous overworked and underpaid public defenders, who do not have a clue about Deaf people and ASL, represent most Deaf people in court. That they are unable to advise or lead such. Sad to say many stories were shared with me about court-ordered private programs that refused to provide ASL interpreters or a CDI (Certified Deaf Interpreter, that in any CDI interpretation, a conversation is facilitated from a hearing person to the hearing interpreter to relay to the deaf interpreter then s/he conveys to the deaf person for clarity, and vice a versa. This should give you a better idea of a situation, https://www.courtlistener.com/opinion/1450801/linton-v-state). We need certified interpreters for any and all programs and services ordered by court. It is insufficient, illegal and wrong to expect a family member to provide interpretating for these important services or to ask the Deaf person to cover costs for interpreters. When the court requires attendance in private programs and services, please ensure that the agencies offering services provide certified interpreters for Deaf people. Also to ensure that court will remove those agencies from approved list for not meeting the needs of deaf people. Because it is so difficult to find ASL provided court-ordered programs, courts should not punish Deaf people who are unable to get ASL services. This is an ongoing issue of fairness and justice for Deaf people. Thanks for “hearing” this plea.	

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	Commenter	Position	Comment	Committee Response
6.	Jeniffer Elias		Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
7.	Rochelle Greenwell		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered	See Committee Response to Comment 1 above.

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Language Access: Language Services in Non-courtroom Programs and Services (adopt Cal. Rule of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450)

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	Commenter	Position	Comment	Committee Response
			programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
8.	Denise Gruber		Please include Deaf people in the Non-Courtroom proposed rule 1.300. ASL needs to be included for court-ordered access. It is vital that the Deaf and Hard of Hearing community be provided interpreters for court-ordered classes such as parenting classes. Typically these side programs do not provide language access and the court program is inaccessible to members of the Deaf and Hard of Hearing Community. This puts their compliance with the Court in real jeopardy as they have no access. Families then are at risk and everything can snowball. Please include Deaf people in the Non-Courtroom proposed rule 1.300. ASL needs to be included for court-ordered access. I am an ASL interpreter and I see the fallout of this problem daily. The courts need to make this simple change to ensure equal access for those they are trying to help.	See Committee Response to Comment 1 above.
9.	Christine Kanta		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don’t punish Deaf	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
10.	Halie Kook		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
11.	Terri Manning		I urge you to include Deaf people in Rule 1.300. Without language access, Deaf people are unfairly and disproportionately punished when trying to right their lives under court order. I believe that judges have good intentions and legitimate grounds for ordering non-courtroom programs and services, but the judge's order without language support (such as the provision of certified ASL interpreters) is unfair and made without proper care that these programs are largely	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			inaccessible to Deaf people. Many court-ordered private programs refuse to provide interpreters under the ADA claiming hardship. It is insufficient and wrong to expect a deaf person to bring a family member (not a trained interpreter) to interpret for these important services. Also it is unfair to expect all deaf people to pay for interpreters to access the same programs that a hearing person can attend. I have many deaf friends who have been denied services from private non-courtroom programs simply because the private program does not have interpreting services in their budget. The programs say, "Oh no, we don't provide interpreters. You have to bring your own or go somewhere else." There is no where else that provides interpreters. Access for deaf people is pervasively limited. To have a mandatory program deny access is common in the deaf lived experience! Please INCLUDE DEAF PEOPLE in the Non-Courtroom programs proposal RULE 1.300. Deaf people need language access for non-courtroom programs and services.	
12.	Celeste Matias		Please include Deaf people in Non-courtroom programs proposal Rule 1.300. Courts should have a list of court ordered programs that provide ASL for Deaf people. It makes no sense to order them to a program and they wont be able to understand what is going on! If private programs refuse to provide certified interpreters, they should be removed from the court program list. This is not compliant with ADA. A Deaf person should NOT have to pay for interpreting services for something the court has ordered especially if no one else that speaks a different has to pay for their interpreters. Please make this change!	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
13.	Mona Mehrpour and Bella Munoz		We hope this email finds you well. Ours names are Mona Mehrpour and Bella Munoz and we are both daughters of immigrant, deaf parents. We would like to thank you in advance for taking the time in reading our thoughts and concerns on language access and language services in non-courtroom programs and services. As children of deaf parents, watching them navigate on how to gain language accessibility and accommodations, to say the least, has been a struggle. To put it in to perspective, when denying to provide sign language interpreters for programs such as parenting classes or domestic violence education courses, it would then result that the deaf person would either have to pay out of pocket for interpreters, risk being jailed for when not complying with the court order, or rely on their children/family/friends who are not properly trained to interpret such circumstances. When having to rely on those friends or family members, this causes personal conflict, high stress, potential vicarious trauma and a high-risk factors with miscommunication for all parties involved including the deaf consumer, the individual providing the program, and anyone else that would be apart of this experience. Again, as daughters of deaf parents, we understand what it means to be put in that predicament because we once had to do so at such a young age due to the courts failure in providing interpreters in a non-court environment. Looking back, we now recognize how appropriate it was for us to take such a task and how much heavy of a responsibility that is for one to carry. With California proposing a new rule of court that which does not include Deaf people, would cause a lot of harm if one were wanting the opportunity to redeem themselves from the law.	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			Though California provides certified interpreters to Deaf people in court, they often have court orders to complete classes and programs provided by private agencies outside of the court. This is where the code has failed to provide resources and accessibility for Deaf individuals to complete these courses. Under the Rules of Court 1.300, particularly under (c) "…a court should avoid ordering a limited English proficient court litigant to a private program, service or professional that is not language accessible," and (d) The court may "enter an alternative order or extend time for completion," supports the intent of utilizing a sign language interpreter. It is imperative for courts to ensure that private court-ordered programs follow ADA guidelines. California's new proposal for interpreting services for court-ordered programs and services does not include Deaf people, only hearing people who do not know English. We ask that you take this time to consider what great changes could impact within the deaf community and that this is taken seriously. The thought of having someone, like our parents, go to jail all due to lack of communication which could be easily avoided.	
14.	Mary Kathryn Monahan		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters.	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
15.	Michelle Monahan		My parents are both Deaf. I now work to train interpreters to provide access to education and services for Deaf people. My parents went without interpreters too often when I was a child and I often had to interpret for services that no child should be expected to interpret, or they went without. With the ADA in place for nearly 30 years, we still see instances that exclude Deaf people from access to important services. Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Thank you for your time.	See Committee Response to Comment 1 above.
16.	Aimee Morley		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
17.	Matthew Moyers		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. A few of my Deaf acquaintances' experience trying to get court-ordered classes was one of very great difficulty. Court-ordered classes would not provide ASL Interpreters thus these Deaf acquaintances reported to me "I attend the class because the court ordered me to. I didn't learn anything because I did not hear what was being taught. At least by attending, I meet the requirements of the court order". Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people. Thank you for your time.	See Committee Response to Comment 1 above.
18.	Jennifer O'Donnell		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
19.	Erica West Oyedele		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
20.	Cristina Ramos		Please include Deaf people in the Non-Courtroom programs	See Committee Response to Comment 1 above.

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	Commenter	Position	Comment	Committee Response
			proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists.	
21.	Hillary Smith		Please include Deaf people in regards to non-court room programs and services as referenced in the Rule of Court 1.300 Proposal. The order should have a list of programs that have ready access for Deaf people. I am a hearing person who has a Deaf spouse, and I have personally witnessed how often private programs and services do not have accessible classes or material for Deaf consumers. This is a widespread issue that all Deaf people experience, and should be taken into serious consideration when creating court orders. Even with the ADA, many court-ordered private programs wont provide services for Deaf participation. When the court orders mandatory attendance to private programs in order to take a required class, and the court is provided with a full attendance report from the Deaf person, that should be taken to mean that those particular programs did provide interpreters and access to material. If the Deaf person providing an attendance sheet reports back that the required programs did not provide access, those programs should be removed from the list. Deaf people need certified interpreters for any program or service ordered by the court. It is not ethical, sufficient, or legal for a family member to interpret for them. Please, do not punish Deaf people for the severe lack of programs which provide classes in ASL or are willing to provide a certified ASL interpreter. This issue is an	See Committee Response to Comment 1 above.

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Language Access: Language Services in Non-courtroom Programs and Services (adopt Cal. Rule of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450)

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	Commenter	Position	Comment	Committee Response
			issue of equality and justice for Deaf people. Thank you so much for your time and consideration.	
22.	Andrea Spaugh		According to your proposal: Rule of Court 1.300, under section d. and c., there is not fair language access to people who are Deaf. They are being excluded from being incorporated in this action while other people who don't speak English will be accommodated. This rule would mean that any type of class, service, or program that the court orders a family or individual that is Deaf to take, will not provide them with interpreting services. There will be a court order for something to be done, but no interpreting services will come with that court order. So, the result would be that the family or individual would have to pay out of pocket to finish a task that the court has ordered them to do. Plus, some services or programs will not have an interpreter or refuse to have one, the court should put into effect with the order that an interpreter must be provided for the service that is required. This rule would be punishing people for being Deaf. With this rule, they would not have language access to programs and services that they are required to finish. Please, reconsider and rethink how people who are Deaf can be included and incorporated into this process.	See Committee Response to Comment 1 above.
23.	Rachael Studebaker		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. Family member	See Committee Response to Comment 1 above.

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			are not appropriate choices to provide interpretation for these important services. Nor is it equal treatment ask the Deaf person to pay out of pocket for interpreters. It is difficult to find court-ordered programs that are ASL based or willing to provide interpreters. Courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
24.	Shree Walker		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
25.	Darrell Utley By phone call via interpreter on February 6, 2019 at 2:10 pm		*4th Generation deaf person, born and raised in California. Has good access compared to other states. I am fortunate to live in this environment. My friend warned me about the proposal and the rules and I have some concerns. I went to traffic school for a ticket and it was out of the courtroom and I needed to go to court. They always provided an interpreter for me. My kid's	See Committee Response to Comment 1 above.

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			booster chair, I got a ticket for that. I was in Riverside County courthouse and I requested an interpreter and they provided a certified ASL interpreter and they also provide interpreters for medical, there are different requirements. So, then I have another interpreter that does educational, community interpreters. I have no problem with the court system, but when they refer an interpreter, they did not refer for traffic school. Told me I had to get an interpreter myself for traffic school. They have a captions option for videos. I am skilled in English but other Deaf people are not. If there was a conviction for drugs and they were required to go to NA or AA or rehab services of some kind, they are court mandated for them. There are many organizations that will not provide interpreters. There is a big struggle to get services for deaf people. Some of these places aren't mandated to provide interpreters, but there are many of these organizations that do not offer services, but it is a court-mandated requirement. My concern is about the language in your bill, because I was reading through it, but it doesn't say anything about ASL. ASL should be added to the rule. Because I know in CA there are many people who speak Spanish and they are provided with foreign language interpreters but Deaf people have a hard time getting the services they need. What if the court mandates the organizations to include those types of interpreters. That way, these people can fulfill their court requirements and then you have equal access. I'm speaking for the ASL community and I want to make sure the resources you have available for providers or agencies that they can provide these types of resources for these people in the deaf community that are mandated. And you can't just get anybody, they have to be certified. We need an ASL interpreter who is certified RID or	

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	Commenter	Position	Comment	Committee Response
			NAD. Those are what the courts have the requirements to use inside the court, that way the communication access all runs smoothly during the exchange.	
	Comments from Interpreters			
26.	Eboni Gaytan Nationally Certified Interpreter for the Deaf		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
27.	Cathrael Hackler Certified ASL Interpreter		I'm writing you to implore you to include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts need to maintain a list of court-ordered programs that provide ASL access for Deaf people, to only order participants go to those programs and to keep it up to date with oversight. Deaf people have always struggled to access programs and services, even with ADA laws in place, and many court-ordered private programs refuse to provide ASL interpreters for Deaf	See Committee Response to Comment 1 above.

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			participants. If they're unable to access the programs, that leads to compliance problems and only worsens their legal issues but through no fault of their own if it's due to access issues. Courts should not punish Deaf people who are unable to get services in ASL. It is a question of justice for Deaf people. There must be Certified ASL interpreters for any court-ordered programs and services as well. Family members, or staff that know a little sign language are not sufficient, nor legal or ethical, for these important services. Thank you for your time and all you do.	
28.	Stefanie O'Brien ASL Interpreting Preparation Program Student		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people. Thank you for your support.	See Committee Response to Comment 1 above.
29.	Tara Potterveld Nationally Certified Legal Interpreter		My name is Tara Potterveld. I am a certified court interpreter and a member of the California Court Interpreters Advisory Panel (CIAP). I have been studying the proposed rule of court	See Committee Response to Comment 1 above.

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			1.300 to see if it would also benefit Deaf people who rely on American Sign Language (ASL). I was most interested in whether Deaf people should be included under (c) "…a court should avoid ordering a limited English proficient court litigant to a private program, service or professional that is not language accessible." And (d) The court may "enter an alternative order or extend time for completion." Page 15 of the Strategic Plan for Language Access in the California Courts discusses Deaf people. Footnote 8 states: "The legal requirements relating to access for deaf or hard of hearing court users are governed by the Americans with Disabilities Act (ADA) and other relevant statutes . However, deaf or hard of hearing court users and their interpreters should be considered as part of any language access plan implementation whenever appropriate…Where access may not be provided to deaf or hard of hearing court users under the ADA, the courts will provide access as part of their compliance with this plan." I had heard for years how difficult it is for Deaf people to access court-ordered outside services. As part of my study of this issue, between January 28 and February 4, 2019, I called a random sample of private agencies that offered court-ordered parenting classes and domestic violence education. I chose the agencies from a variety of county court approved lists that I found on court websites from Placer County to San Diego County Superior Courts. The results were disheartening. The services that I called either did not know anything about how to obtain interpreters or told me that the Deaf person must bring a family member to interpret. Some programs directed me to County Human Service Agencies and others hung up when I made my inquery. I spoke to a former colleague who currently works for a Human Service Agency in Northern California.	

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			She is a Protective Services Worker. I told her about my research in regard to the proposed rule of court 1.300. She confirmed that the Deaf parents she works with have often had their cases drastically delayed because there were no services to accommodate their special needs. These delays meant that Deaf parents were separated from their children longer than parents who can hear. Her most recent client required a Certified Deaf Interpreter as well as an ASL interpreter. Her preference is to find therapists and counselors who can provide direct services in ASL, but there are none in her county. Although the ADA is designed to cover Deaf people's rights to accommodation, it is ineffective or not applied by many court-ordered programs and services. Part of the problem is the expense of providing interpreters, particularly for 52-week domestic violence or anger management education. The ADA states that entities are required to provide aids and services unless doing so would result in an "undue burden", defined as significantly difficult or expensive. Thus many of the private service providers can legally refuse to provide services for Deaf people. In addition, most Deaf people do not have the knowledge or resources to challenge an ADA violation. A Deaf person can attend a class to satisfy the court's requirement, yet, without interpreters, the Deaf person learns little from the class. Even on-line classes require a level of English reading skills that many Deaf people do not possess. It is vital that courts know that the lists of private providers they give very often do not provide accommodations for Deaf people. Under the proposed rule 1.300, the court could make allowances for Deaf people who are having difficulty satisfying court orders due to communication barriers. By including Deaf people in rule 1.300, the court can help ensure	

	Commenter	Position	Comment	Committee Response
			that Deaf people can obtain court ordered services without being significantly penalized. The cost to the court would involve utilization of court personnel time to verify that programs on court-approved lists of service providers accommodate ASL users. The list should then have that information clearly stated. This work will be no different than the resources being expended for Limited English Proficient court users who are not Deaf. The savings to the court would include fewer interpreted court hearings since rule 1.300 would encourage the court to find suitable alternatives for court-ordered services in order to move Deaf people more efficiently through the legal system.	
30.	Jennie Saunders CODA RID Certified CI/CT		It has come to my attention that the CA court system is not understanding the needs and plight of deaf people in its consideration of its new rules. I am the daughter of two deaf parents who have both suffered within your system. I am also a nationally RID certified sign language interpreter fo the deaf who has worked in both the CA and NY legal and court systems. The problems deaf people are facing is that courts do not order private programs (which provide services demanded by the court system) to provide ASL sign language interpretation services for deaf people. Thus, there is no way deaf people can complete these programs in a fair manner on par with hearing people. Deaf people are asked to pay for interpreters themselves, which can run into the hundreds if not thousands of dollars, which is clearly prohibitive for most if not all Deaf people. These court ordered programs ARE expected, under the federal ADA Law (Americans with Diabilities Act) to PROVIDE services to deaf people in order to provide communication access in the deaf person's preferred language. This means it is	See Committee Response to Comment 1 above.

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			not up to the programs to decide how communication is provided rather it is up to the DEAF person to decide. Also the programs are financially responsible to pay for interpreters to give deaf equal access to their programs. But your courts are not understanding nor enforcing this. Please DO SO when considering the new Rules, including Rules of Court 1.300. These new rules have deaf people very fearful and concerned that they will be court ordered to programs they cannot understand nor afford to complete, all because of their disability. Deaf folks deserve to complete the mandatory programs just like anyone else without losing their "shirts' in the process. Deaf people mostly genuinely want to follow the law but have no means to do so. CA Courts MUST and SHOULD rectify this gap by ordering AND enforcing court ordered programs to pay for any and all communication acces for deaf who wish to participate and complete their programs! Deaf people should be included in Rules of Court 1.300, particularly under (c) "…a court should avoid ordering a limited English proficient court litigant to a private program, service or professional that is not language accessible." And (d) The court may "enter an alternative order or extend time for completion." Please consider the needs of these marginalized and historically oppressed people. It's truly unfair to them to inhibit their ability to comply with the law.	
31.	Churyl Zeviar Daughter of Deaf parents, and Interpreter		My experience with trying to get court-ordered classes with interpreters has been that it is next to impossible. Just today I worked with a 20 year old male who has actually wanted to take Domestic Violence classes to better himself, but cannot find a place to pay for the interpreters. He is already so marginalized in life. Not learning how to deal with his anger may result in recidivism, and a greater burden to the court and	See Committee Response to Comment 1 above.

	Commenter	Position	Comment	Committee Response
			society in the long term. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
	Comments from Organizations (Service organizations, advocacy organizations and universities)			
32.	American Civil Liberties Union of California (Kevin G. Baker) Asian Americans Advancing Justice-Los Angeles (Carolyn Kim) Asian Pacific Institute of Gender Based Violence		*(The full text of this letter is available as an attachment to this comment chart; specific recommendations have been excerpted.)* We appreciate the efforts of the Judicial Council in proposing rule 1.300, which we believe will greatly enhance language access and justice for litigants, and we offer the comments and recommendations below. The language of the proposed rule must be stronger to impose more accountability on the courts to be proactive in ensuring that litigants are able to comply with court orders. Currently, it places the burden on the litigants to	Specific recommendations and responses have been numbered for convenience.

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	(Wendy Lau-Ozawa) Bet Tzedek Legal Services (Diego Cartagena) Center for the Pacific Asian Family (Debra Suh) Family Violence Appellate Project (Erin Smith) Justice in Aging (Denny Chan) Korean American Family Services (Connie Chung Joe) Korean Resource Center (Jenny Seon) Legal Aid Association of California (Zach Newman) Legal Aid Foundation of Los Angeles (Joann Lee) Legal Services of Northern California (Stephen E. Goldberg) LevittQuinn Family Law Center (Ana Storey) Los Angeles Center for		notify the court and does not articulate a protocol to find alternative language services. The case cited in the memo, *In re J.P.* states: > The due process considerations also inform our conclusion that it is an abuse of discretion to make a dispositional order with the knowledge that a parent cannot participate in the ordered services. No parent should be placed in this trap. The remedy is for DCFS and **the court to provide language assistance of some sort**. *In re J.P.,* 14 Cal. App. 5th 616, 626 (2017) (emphasis added). The courts must be responsible for ultimately providing the needed language assistance if no other alternatives exist. The litigants should not be forced into the "trap" of being bounced around to determine whether services are available in their language, when they are already unable to communicate proficiently in English. (1) **The court must also be equipped and responsible for exploring these alternatives, rather than placing the burden on the litigants to raise the issue.** It is not currently clear from the draft form LA-350 what types of language assistance will be listed in the drop-down options, (2) **but this part should be modified to allow providers,**	(1) The Committee appreciates this concern and seeks to equip courts with information about local providers that will allow them to make an appropriate response. (2) The Committee appreciates this feedback and

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	Law and Justice (Jimena Vasquez) Public Law Center (Jorge Alvarado) Thai Community Development Center (Chanchanit Martorell)		**programs, and professionals to more easily check multiple types, which should be strongly encouraged in the Advisory Committee Comment to Subdivision (c).** It will also help ascertain whether the language assistance is only oral (and should specify whether through bilingual providers, qualified in-person interpreters, or remote interpreter services), or whether it also includes professionally translated written materials or other audio/visual methods, if they are part of the program's instruction or services. Further, (3) **the court should be required to provide notice to litigants that they can file form LA-400, and have this form, as well as form LA-450, translated into the court's top eight languages.** It is not realistic to require persons, who are by definition limited English proficient, to complete a form that is written in English. (4) **For languages outside the top eight, the court should provide sight translations of the forms and orders in the litigant's primary language.** LAP Recommendation #40 supports such a directive, in stating, "Courts will provide sight translation of court orders and should consider providing written translations of those orders to LEP persons when needed. At a minimum, courts should provide the translated version of the relevant Judicial Council form to help litigants compare their specific court order to the translated template form. (Phase 1)" Please find below suggested changes to the language of proposed rule 1.300 reflecting these recommendations.	agrees that the form should be usable both in paper and electronic format. The Committee has amended the form to list potential services, languages and types of language assistance, and instruct the provider to "select all that apply." The Committee declines to amend Advisory Committee Comment Subdivision (c). (3) The Committee appreciates this suggestion and recommends that when a service is ordered, the court provide LEP court users with information about this process and copies of these forms. The Committee considers these forms a high priority for translation into the state's top eight languages. (4) The Committee appreciates this suggestion but declines to issue a mandate on sight translation through this rule proposal. The Committee agrees that sight translation of a court document is an appropriate service for interpreters to undertake in this circumstance.

	Commenter	Position	Comment	Committee Response
			(b) Provision of language services in court-ordered and court-provided programs, services, and professionals As soon as feasible, each court must adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided programs, services, and professionals to the same extent as persons who are proficient in English. (5) <u>These procedures must include methods to track and maintain records of language services offered by each program, service, and professional, including those offered by the court and through private providers.</u>	(5) The Committee appreciates this suggestion but declines to make this specific process mandatory on courts, given the wide range of court approaches to this issue, depending on size and existing community resources.
			(c) Provision of language services in private programs and services, and by private professionals ~~To the extent feasible, a~~ (6) <u>Each</u> court ~~should~~ <u>shall</u> avoid ordering a limited English proficient court litigant to a private program, service, or professional that is not language accessible. <u>If no language services are available in a litigant's language, the court must either provide the language services or propose a meaningful alternative to allow the litigant to participate.</u>	(6) The Committee appreciates this suggestion but declines to make this change.
			(d) Delay in access to services If a limited English proficient court litigant is unable to access a (7) <u>court-provided program, service, or</u>	(7) The Committee appreciates this suggestion but declines to include court-provided programs in

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			professional or unable to access a court-ordered private program, service, or professional within the time period ordered by the court due to limitations in language service availability, the court litigant may submit a statement to the court indicating the reason for the delay and the court may, for good cause, enter an alternative order or extend the time for completion. Court litigants may use *Service Not Available in My Language: Request to Change Court Order* (form LA-400) for this purpose. The court may respond to the request using *Service Not Available in My Language: Order* (form LA-450). (8) The court must notify limited English proficient litigants, when ordering a court-provided or court-ordered private program, service, or professional, of the litigant's ability to submit a statement or form LA-400 to the court regarding limitations in language availability. Further, each court shall translate the form LA-400 and form LA-450 into the county's top eight languages. For other languages, each court must provide sight translation of the contents of the forms and orders in the litigant's primary language.	this subdivision of the rule. These services are addressed in subdivision (b). (8) The Committee appreciates this suggestion but declines to insert these mandates. Because these are Judicial Council forms, the Committee encourages local courts to use as many Judicial Council translations as apply to their local service area.
33.	Patty Albee, School Psychologist California School for the Deaf		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for	See Committee Response to Comment 1 above.

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			any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of language access, fairness, and justice for Deaf people.	
34.	Michelle Bronson, Executive Director Deaf and Hard of Hearing Service Center (Fresno, CA)		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf individuals. Our DHHSC Client Services Specialists are often faced with many challenges trying to assist clients who are required to participate in court-ordered classes, including those for anger management, nurturing parenting, domestic violence and/or sexual assault, and batterers' intervention, due to finding organizations that will provide ASL interpreters. While the clients are required to take such classes, many of the court-approved organizations do not provide interpreters, often leading to the clients being punished by the judge for non-compliance, delays in finding a suitable class that meets the court requirements, clients being forced to pay for both the classes and interpreters for which they do not have funds, and their court cases being extended over time due to delays in getting the requirements fulfilled. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the	See Committee Response to Comment 1 above.

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			court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf people for programs not providing ASL interpreters that would make court-ordered classes accessible to them. Due to court-approved classes not being in compliance with ADA laws, it is very challenging for Deaf individuals to be compliant with court orders. Because it is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
35.	Michelle Camara, Day Program Manager Deaf Plus Adult Community		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. My experience trying to get court-ordered classes was really challenging and baffled. Information and knowledge is being taken away as I didn't have any direct access to the information. I was eager and hungry to gain my knowledge by classes but no interpreter. I was disappointed and had to paid out of my pocket for me being able to have access to important sensitive informations. I also know many of my other Deaf peers who in the same boat and faced a lot of hardship with	See Committee Response to Comment 1 above.

	Commenter	Position	Comment	Committee Response
			being their access to the languages being taken away. Especially under court of the state that serves people. This area is critical and important to provide equal language access. Also hold all private agencies accountability for not meeting their end and violates ADA laws as well. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people. Thank you for your time to listen this important matter.	
36.	Rosemary R. Wanis Rosemary R. Wanis, Ed. D., MSW, CDI Full-Time Lecturer *and Grant Project Coordinator* *USDE Federal Grant: Deaf Education Personnel Preparation - H325K130407* *USDE Federal Grant:*		I am a Certified Deaf Interpreter and I am a Deaf faculty member at CSU Fresno. I work with the Deaf community at large and with students who seek to be future professionals working with the Deaf community as interpreters, educators, advocates, lawyers, nurses, doctors, and more. Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. The court has often required court-ordered classes for Deaf individuals in the criminal justice and family law system. Classes include	See Committee Response to Comment 1 above.

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	Educational Interpreter Preparation Program - H325K140404 Communicative Sciences and Deaf Studies Fresno State University		domestic violence batterer treatment, anger management, parenting classes, counseling services, and more. However, when asking the court who will cover the cost of interpreting services, either the court says that is not their issue or they drop the service citing undue hardship and the person is placed at risk for re-offending due to not receiving any intervention or access to intervention. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. I have seen stories of Deaf individuals just sitting the classroom and learning nothing. Even though they are required to pay for every class Agencies asking family members to come in and "interpret" when often family members do not know sign language or are not fluent enough to interpret formal context. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Please put a stop to this unethical and unlawful practice. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people. If we want the world to be a better place, we need to make our services accessible and inclusive to all.	
37.	Dennis Smeal, Chair Legislation Committee		*(The full text of this letter is available as an attachment to this comment chart; specific recommendations have been*	Specific recommendations and responses have been numbered for convenience.

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	Supervising Attorney Los Angeles Dependency Lawyers, Inc.		*excerpted)* We applaud the efforts of the Language Access Plan Implementation Task Force and the speed with which they are attempting to provide a response to situations such as the one identified in *In re J.P.* As you know, *J.P.* arose out of a Dependency Court matter and can only be understood in the context of Dependency Court. Our concern is that the proposed Rule of Court and the new forms, while effective in some court systems, will be ineffective in Dependency. Below, we suggest some changes to the proposed Rule but believe a preferable solution would be amending Welfare & Institutions Code (WIC) Sections 361.5(e)(1)(D)(ii), 361.5(a)(3)(B) and 366.22(b). These amendments would add Limited English Proficient Parents to the list of populations, such as detained, incarcerated, and institutionalized parents, for whom programs can be ordered only if "actual access to these services is provided", who must have a specifically tailored case plan when programs are court-ordered, and for whom the court may grant an additional reunification period due to the difficulty in accessing services. (1) **[W]e propose changes to Rule 1.300 (a)(4) to read "Limited English proficient" describes a person who speaks English "less than very well" *or* who cannot fully understand or participate in *an English language* court proceeding."** This change is recommended to reflect the difference between conversational understanding and a legal understanding of English. All of us at LADL have had clients who understand English "more or less" and can make it through a simple conversation in English. There is a vast	(1) The Committee appreciates this suggestion and acknowledges that there are a wide range of language abilities among those who acquire English as a second language. Because this rule addresses *non-courtroom* programs and services (such as counseling and training classes), and because even with an additional criterion, there is a risk of court users overestimating their language abilities, the Committee declines to expand the

	Commenter	Position	Comment	Committee Response
			difference between this, and understanding the legal terms and sophisticated language used by the bench. Often these parents, trying to cooperate with the system or show allegiance to the dominant culture, assert that they are "very well" able to speak English, but in post-hearing review of the court imposed requirements with their lawyer, it is clear that their understanding is woefully inadequate.	definition at this time.
			(2) 1.300(c). As currently drafted, it is a mere suggestion, but, in *J.P.*, the Court of Appeal has made clear that we are talking about a due process right, and due process is not a "when feasible" thing. We propose (c) read "A court shall not order a limited English proficient court litigant to a private program, service, or professional that is not language accessible or that can't be made language accessible."	(2) The Committee appreciates this feedback but declines to make this change.
			(3) While the worth of the forms is clear for other courts, the timelines and procedures outlined in the WIC make them impractical for use in Dependency Court where a parent's reunification services may be terminated for lack of compliance only six months after the case plan is first ordered. Use of the LA-400 here would be argued to illegally flip the burden of tailoring the case plan to the parents, and it is unlikely that limited English parents would know to seek out or have the ability to fill in and file this form. (4) (How many languages will it be translated into?)	(3) The Committee appreciates this perspective and the unique challenges that arise in the dependency context. The Committee recommends that when a service is ordered, the court provide LEP court users with information about this process and copies of these forms. (4) The Committee considers these forms a high priority for translation into the state's top eight languages.

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	Commenter	Position	Comment	Committee Response
38.	Howard A. Rosenblum, Chief Executive Officer National Association of the Deaf (NAD) Claude Stout, Executive Director Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) Nancy B. Rarus, President Deaf Seniors of America (DSA) "The Unstoppable" René G Pellerin, President American Association of the DeafBlind (AADB) Mark Hill, President Cerebral Palsy and Deaf Organization (CPADO) Melvin A. Walker President, RID Board of Directors Registry of Interpreters for the Deaf, Inc. (RID) John Gournaris, Ph.D., President		*(The full text of this letter is available as an attachment to this comment chart; specific recommendations have been excerpted)* The undersigned member organizations of Consumer Groups represent 48 million deaf and hard of hearing[1] Americans who are accorded protection under the U.S. Constitution as well as federal and state laws to have equal access to courtrooms. Accordingly, a deaf or hard of hearing participant in court proceedings must be able to effectively communicate with all relevant personnel in the courtroom. Such equal access includes: understanding what is being communicated by the judge, attorneys, witnesses, or jurors; having the ability to respond; and having that response be understood by everyone in the courtroom. Unfortunately, to this day across the country, deaf and hard of hearing individuals continue to encounter communication barriers that deny them an opportunity to participate fully in the judicial process. The issue of communication access in legal settings is so prevalent that the American Bar Association issued guidance to courts on improving access for individuals who are deaf and hard of hearing ("ABA Guide").[2] The Council's Language Access Plan Implementation Task Force proposes a new rule as part of what the Council terms "a comprehensive and systematic approach to expanding language access in the California courts."[3] This new rule focuses on the provision of language services outside the courtroom, namely in court-ordered/court-operated programs. However, the Language Access Plan ("LAP") recommendations has a glaring omission in that it fails to include deaf and hard of hearing people as part of the populations needing language access to	Specific recommendations and responses have been numbered for convenience.

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	Commenter	Position	Comment	Committee Response
	American Deafness and Rehabilitation Association (ADARA) The Hon. Richard Brown (retired), President Association of Late-Deafened Adults (ALDA) Zainab Alkebsi, Esq. *Policy Counsel* National Association of the Deaf		such programs and services. We would like to remind the Council of footnote 8 on page 15 of the Strategic Plan for Language Access in the California Courts[4] ("CLASP Report"), which indicates that the LAP implementation applies to deaf and hard of hearing court users. It states that although the legal requirements relating to access for deaf or hard of hearing court users are governed by the Americans with Disabilities Act (ADA) and other relevant statutes, "deaf and hard of hearing court users and their interpreters should be considered as part of any language access plan implementation." The 2015 strategic plan even includes a photograph of an American Sign Language (ASL) interpreter. Yet the recent Invitation to Comment fails to include deaf and hard of hearing court users as part of its LAP recommendations. This is a critical omission given the communication access issues described above; moreover, California's own Rules of Court state: "It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system."[5] It is imperative to include the needs of deaf and hard of hearing users in a plan for persons with Limited English Proficiency as "many of the same underlying issues that apply to create accommodations for deaf and hard of hearing persons also apply to persons with Limited English Proficiency."[6] In many legal proceedings, deaf and hard of hearing participants are ordered to complete classes and programs outside of the courtroom, such as anger management classes or parenting classes. Yet when a private court-ordered program refuses to provide an ASL interpreter despite the federal and state laws requiring access, the deaf person under court order to complete the program can suffer the consequences in court even though the failure is a result of the program's	

	Commenter	Position	Comment	Committee Response
			inaccessibility. This kind of punishment to deaf individuals for the failure of court-ordered programs to be accessible is a devastating Catch-22 for such deaf individuals. For example, deaf parents risk judicially mandated separation from their children even when the deaf parents try to participate in any court-ordered parenting program that refuse to provide communication access. Similarly, a court might incarcerate a deaf person simply because of a perceived lack of compliance with a court-ordered program when the blame lies in the program's inaccessibility. While the Council's proposal is for language access services specifically, we are gravely concerned about deaf and hard of hearing court users suffering similar consequences when court-ordered programs deny auxiliary aids and services other than ASL interpreters- such as Communication Access Real-Time Translation ("CART" or "real-time captioning) and assistive listening devices (ALDs) - despite already-existing legal mandates. It is absolutely critical that California courts take steps to ensure that private court-ordered programs meet their legal obligations. Yet, under the proposed rules, the Council fails to include deaf and hard of hearing people for such situations. Without including protections for the deaf and hard of hearing population, the Council is not meeting its goal of all persons having "equal access to the courts and court proceedings and programs."[7] Listed are certain recommendations that "specifically address the provision of language assistance in court-ordered services and programs [....] in order to achieve language access in activities that occur outside the courtroom."[8] We do concur with the principles listed in the following three recommendations but urge that these principles be also applied to deaf and hard of hearing court users.	

	Commenter	Position	Comment	Committee Response
			-Recommendation 10, which calls for the use of qualified court interpreters in all court-ordered/court operated programs This recommendation should be interpreted to apply to deaf and hard of hearing users. (1) **We urge the Council to require the use of certified ASL interpreters with a specialist certificate for legal settings ("SC:L") as well as require the use of Certified Deaf Interpreters (CDIs) where appropriate.** For all court-ordered/court operated programs, **every effort should be made to secure interpreters with the SC:L certification, which demonstrates proficiency in both generalist interpreting skills and legal interpreting skills.** The ABA Guide urges that if an interpreter possessing SC:L is not available, "interpreters who have professional certification or licensure; 80 hours of training for interpreting in legal settings; and experience interpreting in legal settings (particularly where such experience is supervised)"[9] should be secured. Such minimum standards comport with the requirements of the Americans with Disabilities Act (ADA)and Section 504 of the Rehabilitation Act, which include a definition of "qualified interpreters" as follows: "interpreters who are able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."[10] This definition means that in no situation should a court-ordered/court operated program rely on family members to interpret. Family members typically lack the techniques, skills, training, and experience needed to effectively, accurately, and impartially interpret such activities. Moreover, family members may be the perpetuators or victims of the situation leading to the court proceeding in the first place. California law defines a "qualified interpreter" in court settings as one who "has been certified as competent to	(1) The Committee appreciates this feedback but is unable to address issues of interpreter certification within the scope of this rule proposal.

	Commenter	Position	Comment	Committee Response
			interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired."[11] (2) **It is also imperative that the rules recognize the need for CDIs to ensure equal access to the judicial process for some deaf and hard of hearing people.** Some deaf and hard of hearing people have certain language needs that a generalist sign language interpreter cannot meet. As the ABA Guide explains: Some individuals who are deaf or hard of hearing lack fluency in a standard ASL dialect, or have limited familiarity with ASL due to any number of reasons. They may use a foreign sign language, idiosyncratic non-standard signs or gestures recognized by only those who communicate with the individual regularly ("home signs"), or signs particular to a given region, ethnic or age group. Other factors may affect these individuals' ability to communicate in ASL such as delayed language acquisition, minimal or limited communication skills, mental health conditions, substance abuse, learning disabilities, developmental disabilities, cognitive impairments, blindness or limited vision, or limited education. These individuals may require both a conventional sign language interpreter and a Certified Deaf Interpreter (CDI), sometimes called "relay or intermediary interpreters." CDIs are individuals who are deaf or hard of hearing and have been certified as interpreters by RID. They have excellent communication skills in both ASL and English, as well as extensive knowledge and understanding of being deaf, the Deaf community, and/or Deaf culture. CDIs may also have	(2) The Committee appreciates this input but is unable to address issues regarding the use of Certified Deaf Interpreters through this rule proposal.

	Commenter	Position	Comment	Committee Response
			specialized training and/or experience in the use of gesture, mime, props, drawings, and other tools to enhance communication.[12] Without the use of a CDI working in tandem with an ASL interpreter, these individuals would not gain meaningful access to court-ordered/court operated programs. -Recommendation 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 unavailable in the language of the court user or if language services are not provided to enable access to the programs".[13] If a private court-ordered program refuses to provide ASL interpreters or other auxiliary aids and services, the deaf person who has been mandated to attend the program by court order should not be required to participate in the program or be penalized by the court for being unable to complete the program. Instead, the court should determine the optimal rehabilitation method for the deaf person, such as an appropriate alternative program that provides the necessary access. During this process, (3) **the court should, prior to ordering any rehabilitative program for any deaf or hard of hearing person, take steps to determine whether the program in question provides the necessary access for the deaf litigant to be able to meet the requirements of the court**. -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." While the previous recommendation refers to court-ordered programs, Recommendation 33 refers to "court-appointed professionals, such as psychologists, mediators, and	(3) The Committee appreciates this recommendation and has added "ASL interpretation" as a language option on form LA-350.

	Commenter	Position	Comment	Committee Response
			guardians."[14] If such professionals refuse to provide "linguistically accessible services" for deaf or hard of hearing individuals such as in the form of ASL interpreters, then the deaf person should not be required to utilize said professional to meet the requirements of the court's order. Instead, (4) **courts should make every effort to identify and maintain a database of professionals who can provide the service directly in the language that the deaf person is best able to understand and communicate, or if this is not possible, then the court should ensure that the professionals provide qualified ASL interpreters and other auxiliary aids and services to ensure effective communications with the provision of services.** The LAP also lists Recommendation 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 users in non-courtroom proceedings." The CLASP Report touts the benefits of remote interpreting. (5) **We strongly caution against such encouragement in the deaf and hard of hearing context.** Interpreter services can be delivered remotely, and this has been provided in the deaf and hard of hearing community through a technology known and referred to as "Video Remote Interpreting" (VRI). However, ASL is a three-dimensional language and individuals who are deaf or hard of hearing often struggle to understand ASL on a two-dimensional flat screen. For this reason, VRI is not effective for lengthy or complex situations. Court-ordered and court operated programs are usually extremely complex. The use of VRI can be confusing for some deaf or hard of hearing individuals, and lead to a belief that the deaf or hard of hearing	(4) The Committee appreciates this suggestion and is looking at ways that a database could help courts access and maintain information about local providers. (5) The Committee appreciates this concern but declines to address best practices on the use of remote interpretation services within this rule proposal.

	Commenter	Position	Comment	Committee Response
			individuals are being uncooperative leading to potentially adverse court decisions against them. Furthermore, in a situation where CDIs may be needed, providing CDI services through VRI is not advisable due to the gestures involved and the "need for exceptionally clear visual communication."[15] Moreover, VRI is not effective at all for DeafBlind individuals who rely on tactile interpreting. (6) **If VRI must be used for the lack of better alternatives, we recommend that it only be used with the consent of the deaf or hard of hearing user.** More importantly, the entity providing the program in question must ensure that the VRI technology provides pursuant to federal law: "[r]eal-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images; sharply delineated images that are large enough to display the interpreter's face, arms, hands and fingers and the participant's face, arms, hands, and fingers, regardless of his or her body position; a clear, audible transmission of voices; and adequate training for staff using the equipment in court or elsewhere on how to quickly and efficiently set up and operate the VRI."[16] The CLASP Report acknowledges that "courts must exercise care to ensure that the use of technology is appropriate for the setting involved, that safeguards are in place for ensuring access without deprivation of due process rights, and that high quality is maintained."[17] The Council has already created guidelines on the appropriate use of VRI in California courtrooms and we urge the Council to refer to these guidelines for court-ordered/court operated programs as well.[18] We urge the Council to incorporate the above considerations in its implementation plan and take steps to ensure that any effort to	(6) Please see response to Comment No. 5, above.

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			ensure meaningful access includes partnerships with deaf and hard of hearing stakeholders. Endnotes: [1] The use of the term "deaf and hard of hearing" is intended to encompass all deaf, hard-of-hearing, late-deafened, and DeafBlind individuals, including those with additional disabilities. [2] American Bar Association, Commission on Disability Rights, Court Access for Individuals Who Are Deaf and Hard of Hearing (2017) available at https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.authcheckdam.pdf ("ABA Guide"). [3] Judicial Council, Invitation to Comment, W19-09, page 1, available at: http://www.courts.ca.gov/documents/W19-09.pdf ("Invitation to Comment"). [4] Judicial Council of California, Strategic Plan for Language Access in the California Courts (January 22, 2015), available at http://www.courts.ca.gov/documents/CLASP_report_060514.pdf. ("CLASP Report.") [5] CAL. Rules of Court, Rule 1.100(b) (2007). [6]See ABA Standards for Language Access in Courts (Feb. 2012), available at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html ("Language Access Standards"). [7] CLASP Report at 21. [8]Invitation to Comment at 1. [9] ABA Guide at 15. [10]28 C.F.R. § . § 35.104.	

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			[11] Cal. Evid. Code § 754(f). [12]ABA Guide at 16. [13]Invitation to Comment at 2. [14] CLASP Report at 48. [15]ABA Guide at 16. [16] 28 C.F.R..§ 35.160(d)(1)–(4).See also Minimum Standards for Video Remote Interpreting Services in Medical Settings (Feb. 13, 2018), https://www.nad.org/about-us/position-statements/minimum-standards-for-video-remote-interpreting-services-in-medical-settings. [Although this guidance is for the medical setting, many of the same principles apply here.] [17] CLASP Report at 20. [18]See Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, Administrative Office of the Courts: Court Interpreters Program, Judicial Council of California, available at http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf ("VRI Guidelines").	
39.	Sheri A. Farinha, CEO NorCal Services for Deaf & Hard of Hearing		NorCal Services for Deaf and Hard of Hearing (NorCal) submits the following comments to the Judicial Council's Invitation to Comment #W19-09, specifically on the proposed Rule 1.300. Although not formally recognized as Limited English proficient (LEP), Deaf individuals have the same needs for interpreting services, e.g., American Sign Language (ASL) interpreters. For this reason, the proposed rule 1.300 must apply to Deaf people who use ASL interpreters for access. NorCal is one of eight social service and advocacy organizations contracted with the California Department of Social Services to provide "Deaf Access" services to Deaf and Hard of Hearing residents. NorCal routinely assists Deaf	See Committee Response to Comment 1 above.

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			individuals with access issues including those who have court orders to receive services such as anger management, alcohol and dependency treatment, mental health counseling, or supervised visitations from outside agencies or service providers. Based on our experience assisting Deaf litigants, we know firsthand that the single and foremost barrier for a Deaf litigant with a court-ordered services is finding a program that will provide ASL interpreters. Our staff have worked with litigants to call every provider on the court list, only to find that none will provide an ASL interpreter, even when provided with information about the Americans with Disabilities Act (ADA). The ramification faced by the Deaf litigant is steep: either pay for the interpreters which many cannot afford or risk failing to comply with court orders that can result in jail time or separation from their children. Although service providers are required to be accessible in accordance with the ADA, the reality is that most providers do not have a policy to provide accommodations. Many providers claim to be on a shoestring budget and not able to afford paying for such accommodations. Although Deaf people have ADA protection, it is not reasonable to expect Deaf litigants to pursue ADA violations in court, just to have access to court-ordered service. Deaf litigants face the same barriers as LEP litigants in accessing court-ordered services and therefore, the proposed rule 1.300 should clearly include Deaf litigants in addition to LEP litigants to ensure they are not penalized for private	

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			service or program that is not accessible.	
40.	Dominika Bednarska, PhD SF State		Please maintain deaf people's basic civil rights to language access and include them in non courtroom programs proposed rule 1.300. Private programs and services must either provide ASL interpretation services or be removed from court approved lists. Anything else is a civil rights violation for deaf and disabled people.	See Committee Response to Comment 1 above.
41.	Nancy Cayton Registry of Interpreters for the Deaf (RID) Certified Interpreter		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	See Committee Response to Comment 1 above.
42.	Karen Nakamura, Robert and Colleen Haas Distinguished Chair in Disability Studies and Professor of Anthropology Graduate Advisor, UCB-		I am the Robert and Colleen Haas Distinguished Chair in Disability Studies and Professor of Anthropology at the University of California Berkeley. I have conducted research in Deaf communities and published in these areas. I am considered an expert in the field of Disability Studies. I have read the proposal to Adopt Cal. Rules of Court, rule 1.300;	See Committee Response to Comment 1 above.

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	UCSF Joint Program in Medical Anthropology University of California Berkeley		approve forms LA-350, LA-400, and LA-450. The current proposal as it stands has no mention of the situation of Deaf litigants who require ASL interpretation if they were required to attend private court-ordered programs and services. The absence of such a rule suggests that these Deaf litigants would have to follow the new proposed procedures, which places a disproportionate burden on the litigants to obtain interpreters themselves. Many private court-ordered services are not providing appropriate ASL interpreters for their programs and services, in violation of the Americans with Disabilities Act. The court is thus placing Deaf litigants in the uncomfortable position of first having to either: sue these providers under the ADA in order to motivate provision of ASL interpretation; or to pay out of pocket for the ASL interpretation; or, to not attend the court-ordered services and programs and thus fall in contempt of court. By forcing Deaf litigants into this position, the California court system is placing itself in violation of Title II of the Americans with Disabilities Act and ADA-AA and the 14th Amendment of the Constitution of the United States. The Court is urged to reject the current proposal to Adopt Cal. Rules of Court, rule 1.300 and to return the proposal to committee so that it may either explicitly exclude ADA interpretation from these rules, or to adopt language that specifically spells out the requirement that any court-ordered service (whether private or public) must be accessible to all individuals with disabilities, including ASL interpretation. I am happy to clarify any of the statements above, if requested.	
43.	Susan Schweik Professor of English UC Berkeley		Please include Deaf people in the Non-Courtroom programs proposal Rule 1.300. Courts should maintain a list of court-ordered programs that provide ASL access for Deaf people. My	See Committee Response to Comment 1 above.

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			experience trying to get court-ordered classes was …. (Please include your own experience.) Even with ADA laws, many court-ordered private programs refuse to provide interpreters for Deaf participants. When the court requires attendance in private programs and services, it should ensure that the agencies offering services will provide certified interpreters for Deaf people or remove those agencies from court approved lists. We need certified interpreters for any program or services ordered by the court. It is insufficient, illegal and wrong to expect a family member to provide interpretation for these important services or to ask the Deaf person to pay out of pocket for interpreters. Don't punish Deaf People. Because is is so difficult to find court-ordered programs that are ASL based or willing to provide interpreters, courts should not punish Deaf people who are unable to get services in ASL. This is an issue of fairness and justice for Deaf people.	
	Comments from Courts and Advisory Committees			
44.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	The JRS notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources. • Increases court staff workload. • Impact on local or statewide justice partners. The JRS also notes that the proposal should be implemented to provide equal access to litigants/parties with limited English proficiency.	The Committee appreciates this feedback.
45.	Superior Court of California, County of Los Angeles	A	The proposed LA-350 will not be useful for our Court. Our Court has multiple referral lists informed by, and used in, a range of contexts. Adding the LA-350 information would	The Committee appreciates this feedback and notes that form LA-350 is an optional form in recognition of the fact that some courts may

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			require a cumbersome and unnecessary procedure.	already have well-developed processes for identifying community providers that offer language services and connecting litigants to those services.
46.	Superior Court of California, County of Orange		**Comments on the proposal as a whole**: The JCC should consider making General Counsel and/or financial resources available to courts for actions arising from this proposal. **Does the proposal appropriately address the stated purpose?** Yes **Will the proposed forms assist the court in providing language assistance with non-courtroom services and programs?** No. The forms can assist in identifying the language need only, but not in providing language assistance. The forms do not address who is financially responsible for cost associated with the language services. **Would the proposal provide cost savings? If so please quantify.** No **What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or**	The Committee appreciates this suggestion. The Committee appreciates this feedback on costs and local court operational impacts.

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			modifying case management systems. Minimal training and communication on how to submit a formal request for review.	
47.	Superior Court of California, County of San Diego Mike Roddy, CEO	AM	**Does the proposal appropriately address the stated purpose?** Yes. **Will the proposed forms assist the court in providing language assistance with non-courtroom services and programs?** Yes. **Would the proposal provide cost savings? If so, please quantify.** Our court does not foresee the proposal providing a cost saving. Courts will incur administrative costs developing processes to identify programs that offer language services and confirming the information annually. **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?** Courts will be required to create administrative processes to identify and maintain lists of programs and to confirm annually what language services those programs may provide. Keeping lists like this updated will require significant administrative time for large counties. The implementation requirements would mean training for business office, courtroom, and administrative staff as well as judicial officer training. The initial training would be	The Committee appreciates this feedback on costs and local court operational impacts. The Committee appreciates this feedback and notes that the use of form LA-350 is optional in recognition of the fact that some courts may already have well-developed alternative processes for identifying community providers that offer language services and connecting litigants to those services.

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			approximately two hours for each court staff person and judicial officers, and ongoing training as needed. Changes in processes, procedures, dockets and changes to computer case management system codes may be required. **How well would this proposal work in courts of different sizes?** Section (e) of the proposal may be a benefit for smaller and remotely located courts as it pertains to employing technology to share staff among courts in providing language services. The remainder of the proposal increases the workload for courts of all sizes. The increased amount of work will likely be proportional to the size of the court. General Comments: Rule 1.300	
			(a)(1) "…by a contractor or vendor under agreement with the court." Clarification is needed as to "contractors or vendors under agreement with the court."	The Committee appreciates the opportunity to clarify anything that is unclear in the proposal but is unsure how to define "contractors or vendors" in a way that will be applicable in all courts.
			(e) Courts… should employ technology to promote the sharing of bilingual staff and certified and registered court interpreters among courts, as appropriate This portion of the proposed rule be removed or incorporated into area (b). The verbiage is not in keeping with the whole of the rule to provide access to programs, services and professionals to limited English proficient court litigants	The Committee appreciates this feedback but declines to remove this subdivision given the potential for technological solutions to provide access and enable communications in non-courtroom encounters.

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

	Commenter	Position	Comment	Committee Response
			outside of the court setting. LA-350: Item #3 refers to a "drop-down box," but it is not visible on the form. LA-400: Proposed retitling: "Request to Modify Court Order Due to Lack of Language Access" LA-450: Proposed retitling: "Order on Request to Modify Court Order Due to Lack of Language Access"	The Committee appreciates this feedback and has revised the form to work in both electronic and paper formats. The Committee appreciates the suggestions provided for form titles but has specifically drafted titles that comport with plain language standards, both for ease of use by LEP court users, and to facilitate translation into multiple languages.

February 12, 2019

Judicial Council of California
Attn: Invitation to Comment
455 Golden Gate Avenue
San Francisco, CA 94102

RE: Item Number: W19-09
Adopt Cal. Rules of Court, rule 1.300
Approve Forms LA-350, LA-400, LA-450

Submitted via Electronic Mail to *invitations@jud.ca.gov*

To Whom It May Concern:

We are writing on behalf of the undersigned groups to provide public comment to the Judicial Council as it considers the proposed rule on the provision of language services in court-ordered services and programs. Thank you for taking the time to consider the effects of the proposed rule 1.300 on California's litigants.

Introduction

California is a state that is racially, ethnically, and linguistically diverse. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally.[1] Californians speak over 220 languages[2] and 44 percent of Californians speak a language other than English in their homes.[3] The top five primary languages spoken at home after English include Spanish (10.5 million speakers), Chinese (1.2 million speakers), Tagalog (795,154 speakers), Vietnamese (547,165 speakers), and Korean (367,658 speakers).[4] While the wide variety of languages spoken in the state enriches California culturally, individuals who speak languages other than English at home may also be limited-English proficient (LEP). Limited-English proficiency impacts one's "ability to access fundamental necessities such as employment, police protection, and healthcare."[5] While underrepresented groups among native

[1] *See* U.S. Census Bureau, State & County QuickFacts, available at https://www.census.gov/quickfacts/fact/table/US,losangelescountycalifornia,ca/POP645217 (listing 2013-2017 figures for foreign-born individuals).
[2] *See* California Commission on Access to Justice, *Language Barriers to Justice in California* at 1 (2005), available at http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216.
[3] *See* U.S. Census Bureau, State & County QuickFacts, available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/B16001/0400000US06 (listing percentage of people over age 5 speaking language other than English at home, 2013-2017).
[4] *Id.*
[5] Asian Pacific American Legal Center of Southern California and APIAHF, *California Speaks: Language Diversity and English Proficiency by Legislative District*, at 2 (2009), available at https://www.apiahf.org/wp-content/uploads/2011/02/APIAHF_Report05_2009-1.pdf.

English speakers often face similar challenges, these challenges are compounded for LEP individuals who must also contend with an incredible language barrier. Unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California.[6]

Significant improvements have been made for LEP individuals accessing the judicial system with the adoption of the Strategic Plan for Language Access in the California Courts (LAP) in 2015. Before this effort, many LEP litigants could not utilize the courts, resulting in large numbers of individuals unable to seek legal remedies and have their day in court. As the California Commission on Access to Justice observed in its 2005 report, "[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and therefore cannot rely on an attorney to ensure they understand the proceedings."[7] The report noted that approximately 7 million Californians "cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter."[8] Although improvements have been made in many California courts, some are still struggling to implement the new LAP. To ensure that the California state court system is promoting justice for all Californians regardless of language ability, qualified language assistance must be ensured in all court-ordered services and programs, including those provided by private organizations and professionals.

Legal Background and Mandates

Safeguards protecting LEP individuals in accessing the courts can be found in both state and federal statutes. California Government Code §§ 11135, *et seq.* and its accompanying regulations provide that no one shall be "denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of "linguistic characteristics."[9]

Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin, which has been interpreted to include meaningful language access.[10] As recipients of federal financial assistance, California courts are subject to

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[6] *See* U.S. Census Bureau, American Fact Finder, available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/S1603/0400000US06 (listing characteristics of people by language spoken at home, 2017 American Community Survey 1-Year Estimates).

[7] "Language Barriers to Justice" at 1.

[8] *Id.*

[9] California Government Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).

[10] 42 U.S.C. § 2000d (2004); *Lau v. Nichols*, 414 U.S. 563, 568-569 (1974) ("Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations.").

the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts and on June 18, 2002 issued guidance to recipients of such funding that details these mandates.[11] The DOJ has released a number of guidance letters to funding recipients on this issue, including one on August 16, 2010, maintaining that Title VI requires state courts to provide free interpreter services in all civil, criminal, and administrative proceedings.[12]

To ensure compliance with legal mandates, proper implementation of the LAP must ensure meaningful language assistance for *all* litigants in *all* court-ordered programs and services, including those provided by private organizations and professionals. The LAP specifically states at Recommendation #11:

> An LEP individual should not be ordered to participate in a court-ordered program if that program does not provide appropriate language accessible services. If a judicial officer does not order participation in services due to the program's lack of language capacity, the court should order the litigant to participate in an appropriate alternative program that provides language access services for the LEP court user. In making its findings and orders, the court should inquire if the program provides language access services to ensure the LEP court user's ability to meet the requirements of the court.

Recommendations on Proposed Court Rule 1.300

We appreciate the efforts of the Judicial Council in proposing rule 1.300, which we believe will greatly enhance language access and justice for litigants, and we offer the comments and recommendations below. The language of the proposed rule must be stronger to impose more accountability on the courts to be proactive in ensuring that litigants are able to comply with court orders. Currently, it places the burden on the litigants to notify the court and does not articulate a protocol to find alternative language services. The case cited in the memo, *In re J.P.* states:

> The due process considerations also inform our conclusion that it is an abuse of discretion to make a dispositional order with the knowledge that a parent cannot participate in the ordered services. No parent should be placed in this trap. The remedy is for DCFS and **the court to provide language assistance of some sort**.

In re J.P., 14 Cal. App. 5th 616, 626 (2017) (emphasis added).

The courts must be responsible for ultimately providing the needed language assistance if no other alternatives exist. The litigants should not be forced into the "trap" of being bounced around to determine whether services are available in their language, when they are already

[11] 67 Fed. Reg. 41455-41471 (2002).

[12] http://www.lep.gov/final_courts_ltr_081610.pdf.

unable to communicate proficiently in English. The court must also be equipped and responsible for exploring these alternatives, rather than placing the burden on the litigants to raise the issue. It is not currently clear from the draft form LA-350 what types of language assistance will be listed in the drop-down options, but this part should be modified to allow providers, programs, and professionals to more easily check multiple types, which should be strongly encouraged in the Advisory Committee Comment to Subdivision (c). It will also help ascertain whether the language assistance is only oral (and should specify whether through bilingual providers, qualified in-person interpreters, or remote interpreter services), or whether it also includes professionally translated written materials or other audio/visual methods, if they are part of the program's instruction or services.

Further, the court should be required to provide notice to litigants that they can file form LA-400, and have this form, as well as form LA-450, translated into the court's top eight languages. It is not realistic to require persons, who are by definition limited English proficient, to complete a form that is written in English. For languages outside the top eight, the court should provide sight translations of the forms and orders in the litigant's primary language. LAP Recommendation #40 supports such a directive, in stating, "Courts will provide sight translation of court orders and should consider providing written translations of those orders to LEP persons when needed. At a minimum, courts should provide the translated version of the relevant Judicial Council form to help litigants compare their specific court order to the translated template form. (Phase 1)" Please find below suggested changes to the language of proposed rule 1.300 reflecting these recommendations.

Proposed Changes to Rule 1.300

(b) Provision of language services in court-ordered and court-provided programs, services, and professionals

As soon as feasible, each court must adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided programs, services, and professionals to the same extent as persons who are proficient in English. These procedures must include methods to track and maintain records of language services offered by each program, service, and professional, including those offered by the court and through private providers.

(c) Provision of language services in private programs and services, and by private professionals

~~To the extent feasible, a~~ Each court ~~should~~ shall avoid ordering a limited English proficient court litigant to a private program, service, or professional that is not language accessible. If no language services are available in a litigant's language, the court must either provide the language services or propose a meaningful alternative to allow the litigant to participate.

(d) Delay in access to services

If a limited English proficient court litigant is unable to access a court-provided program, service, or professional or unable to access a court-ordered private program, service, or professional within the time period ordered by the court due to limitations in language service

availability, the court litigant may submit a statement to the court indicating the reason for the delay and the court may, for good cause, enter an alternative order or extend the time for completion. Court litigants may use *Service Not Available in My Language: Request to Change Court Order* (form LA-400) for this purpose. The court may respond to the request using *Service Not Available in My Language: Order* (form LA-450). The court must notify limited English proficient litigants, when ordering a court-provided or court-ordered private program, service, or professional, of the litigant's ability to submit a statement or form LA-400 to the court regarding limitations in language availability. Further, each court shall translate the form LA-400 and form LA-450 into the county's top eight languages. For other languages, each court must provide sight translation of the contents of the forms and orders in the litigant's primary language.

Conclusion

We appreciate the Judicial Council's efforts to implement the LAP and drafting proposed rule 1.300 to enhance the provision of language services beyond court proceedings. We believe that the recommendations above will ensure the provision of meaningful language services for all LEP court users in California in all court-ordered programs and services.

If you have any questions regarding these comments, please feel free to contact Joann Lee at (323) 801-7976 or jlee@lafla.org, or any of the individuals listed below. Thank you very much for your consideration.

Sincerely,

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National Association of the Deaf
www.nad.org

Before the

Judicial Council of California

San Francisco, CA 94102

Language Access: Language Services in Non-courtroom Programs and Services	)))	Docket No. W19-09

Comments of
National Association of the Deaf (NAD)
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
Deaf Seniors of America (DSA)
American Association of the DeafBlind (AADB)
Cerebral Palsy and Deaf Organization (CPADO)
Registry of Interpreters for the Deaf, Inc. (RID)
American Deafness and Rehabilitation Association (ADARA)
Association of Late-Deafened Adults (ALDA)

via electronic filing
February 12, 2019

Zainab Alkebsi, Esq.
Policy Counsel
National Association of the Deaf
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The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf Seniors of America (DSA), the American Association of the DeafBlind (AADB), Cerebral Palsy and Deaf Organization (CPADO), Registry of Interpreters for the Deaf, Inc. (RID), American Deafness and Rehabilitation Association (ADARA), and Association of Late-Deafened Adults (ALDA) (collectively "Consumer Groups") respectfully submit these comments in response to the invitation by the Judicial Council of California ("the Council")for feedback on its Language Access Plan Implementation.

The undersigned member organizations of Consumer Groups represent 48 million deaf and hard of hearing[1]Americans who are accorded protection under the U.S. Constitution as well as federal and state laws to have equal access to courtrooms. Accordingly, a deaf or hard of hearing participant in court proceedings must be able to effectively communicate with all relevant personnel in the courtroom. Such equal access includes: understanding what is being communicated by the judge, attorneys, witnesses, or jurors; having the ability to respond; and havingthat response be understood by everyone in the courtroom. Unfortunately, to this day across the country, deaf and hard of hearingindividuals continue to encounter communication barriers that deny them an opportunity to participate fully in the judicial process. The issue of communication access in legal settingsis so prevalent that the American Bar Association issued guidance to courts on improving access for individuals who are deaf and hard of hearing ("ABA Guide").[2]

The Council's Language Access Plan Implementation Task Force proposes a new rule as part of what the Council terms "a comprehensive and systematic approach to expanding

[1] The use of the term "deaf and hard of hearing" is intended to encompass all deaf, hard-of-hearing, late-deafened, and DeafBlind individuals, including those with additional disabilities.

[2] American Bar Association, Commission on Disability Rights, *Court Access for Individuals Who Are Deaf and Hard of Hearing* (2017) available at https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.authcheckdam.pdf ("ABA Guide").

language access in the California courts."[3]This new rule focuses on the provision of language services outside the courtroom, namely in court-ordered/court-operated programs. However, the Language Access Plan ("LAP") recommendations has a glaring omission in that it fails to include deaf and hard of hearing people as part of the populations needing language access to such programs and services. We would like to remind the Council of footnote 8 on page 15 of the *Strategic Plan for Language Access in the California Courts*[4] ("CLASP Report"), which indicates that the LAP implementation applies to deaf and hard of hearing court users. It states that although the legal requirements relating to access for deaf or hard of hearing court users are governed by the Americans with Disabilities Act (ADA) and other relevant statutes, "deaf and hard of hearing court users and their interpreters should be considered as part of any language access plan implementation." The 2015 strategic plan even includes a photograph of an American Sign Language (ASL) interpreter. Yet the recent *Invitation to Comment* fails to include deaf and hard of hearing court users as part of its LAP recommendations. This is a critical omission given the communication access issues described above; moreover, California's own Rules of Court state: "It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system."[5] It is imperative to include the needs of deaf and hard of hearing users in a plan for persons with Limited English Proficiency as "many of the same underlying issues that apply to create accommodations for deaf and hard of hearing persons also apply to persons with Limited English Proficiency."[6]

In many legal proceedings, deaf and hard of hearing participants are ordered to complete classes and programs outside of the courtroom, such as anger management classes

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[3] Judicial Council, *Invitation to Comment*, W19-09, page 1, available at: http://www.courts.ca.gov/documents/W19-09.pdf ("Invitation to Comment").
[4] Judicial Council of California, *Strategic Plan for Language Access in the California Courts* (January 22, 2015), available at http://www.courts.ca.gov/documents/CLASP_report_060514.pdf. ("CLASP Report.")
[5] CAL. Rules of Court, Rule 1.100(b) (2007).
[6] *See* ABA Standards for Language Access in Courts (Feb. 2012), available at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html ("Language Access Standards").

or parenting classes. Yet when a private court-ordered program refuses to provide an ASL interpreter despite the federal and state laws requiring access, the deaf person under court order to complete the program can suffer the consequences in court even though the failure is a result of the program's inaccessibility. This kind of punishment to deaf individuals for the failure of court-ordered programs to be accessible is a devastating Catch-22 for such deaf individuals. For example, deaf parents risk judicially mandated separation from their children even when the deaf parents try to participate in any court-ordered parenting program that refuse to provide communication access. Similarly, a court might incarcerate a deaf person simply because of a perceived lack of compliance with a court-ordered program when the blame lies in the program's inaccessibility. While the Council's proposal is for language access services specifically, we are gravely concerned about deaf and hard of hearing court users suffering similar consequences when court-ordered programs deny auxiliary aids and services other than ASL interpreters- such as Communication Access Real-Time Translation ("CART" or "real-time captioning) and assistive listening devices (ALDs) - despite already-existing legal mandates. It is absolutely critical that California courts take steps to ensure that private court-ordered programs meet their legal obligations. Yet, under the proposed rules, the Council fails to include deaf and hard of hearing people for such situations. Without including protections for the deaf and hard of hearing population, the Council is not meeting its goal of all persons having "equal access to the courts and court proceedings and programs."[7]

Listed are certain recommendations that "specifically address the provision of language assistance in court-ordered services and programs [....] in order to achieve language access in activities that occur outside the courtroom."[8] We do concur with the principles listed in the following three recommendations but urge that these principles be also applied to deaf and hard of hearing court users.

[7] CLASP Report at 21.
[8]Invitation to Comment at 1.

-Recommendation 10, which calls for the use of qualified court interpreters in all court-ordered/court operated programs

This recommendation should be interpreted to apply to deaf and hard of hearing users. We urge the Council to require the use of certified ASL interpreters with a specialist certificate for legal settings ("SC:L") as well as require the use of Certified Deaf Interpreters (CDIs) where appropriate. For all court-ordered/court operated programs, every effort should be made to secure interpreters with the SC:L certification, which demonstrates proficiency in both generalist interpreting skills and legal interpreting skills. The ABA Guide urges that if an interpreter possessing SC:L is not available, "interpreters who have professional certification or licensure; 80 hours of training for interpreting in legal settings; and experience interpreting in legal settings (particularly where such experience is supervised)"[9] should be secured. Such minimum standards comport with the requirements of the Americans with Disabilities Act (ADA)and Section 504 of the Rehabilitation Act, which include a definition of "qualified interpreters" as follows: "interpreters who are able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."[10] This definition means that in no situation should a court-ordered/court operated program rely on family members to interpret. Family members typically lack the techniques, skills, training, and experience needed to effectively, accurately, and **impartially** interpret such activities. Moreover, family members may be the perpetuators or victims of the situation leading to the court proceeding in the first place. California law defines a "qualified interpreter" in court settings as one who "has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired."[11]

[9] ABA Guide at 15.
[10]28 C.F.R. § . § 35.104.
[11] Cal. Evid. Code § 754(f).

It is also imperative that the rules recognize the need for CDIs to ensure equal access to the judicial process for some deaf and hard of hearing people. Some deaf and hard of hearing people have certain language needs that a generalist sign language interpreter cannot meet. As the ABA Guide explains:

> Some individuals who are deaf or hard of hearing lack fluency in a standard ASL dialect, or have limited familiarity with ASL due to any number of reasons. They may use a foreign sign language, idiosyncratic non-standard signs or gestures recognized by only those who communicate with the individual regularly ("home signs"), or signs particular to a given region, ethnic or age group. Other factors may affect these individuals' ability to communicate in ASL such as delayed language acquisition, minimal or limited communication skills, mental health conditions, substance abuse, learning disabilities, developmental disabilities, cognitive impairments, blindness or limited vision, or limited education.
>
> These individuals may require both a conventional sign language interpreter and a Certified Deaf Interpreter (CDI), sometimes called "relay or intermediary interpreters." CDIs are individuals who are deaf or hard of hearing and have been certified as interpreters by RID. They have excellent communication skills in both ASL and English, as well as extensive knowledge and understanding of being deaf, the Deaf community, and/or Deaf culture. CDIs may also have specialized training and/or experience in the use of gesture, mime, props, drawings, and other tools to enhance communication.[12]

Without the use of a CDI working in tandem with an ASL interpreter, these individuals would not gain meaningful access to court-ordered/court operated programs.

-Recommendation 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 unavailable in the language of the court user or if language services are not provided to enable access to the programs".[13]

[12]ABA Guide at 16.
[13]Invitation to Comment at 2.

If a private court-ordered program refuses to provide ASL interpreters or other auxiliary aids and services, the deaf person who has been mandated to attend the program by court order should not be required to participate in theprogram or be penalized by the court for being unable to complete the program. Instead, the court should determine the optimal rehabilitation method for the deaf person, such as an appropriate alternative program that provides the necessary access. During this process, the court should, prior to ordering any rehabilitative program for any deaf or hard of hearing person, take steps to determine whether the program in question provides the necessary access for the deaf litigant to be able to meet the requirements of the court.

-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."

While the previous recommendation refers to court-ordered programs, Recommendation 33 refers to "court-appointed professionals, such as psychologists, mediators, and guardians."[14]If such professionals refuse to provide "linguistically accessible services" for deaf or hard of hearing individuals such as in the form of ASL interpreters, then the deaf personshould not be required to utilize said professional to meet the requirements of the court's order. Instead, courts should make every effort to identify and maintain a database of professionals who can provide the service directly in the language that the deaf person is best able to understand and communicate, or if this is not possible, then the court should ensure that the professionals provide qualified ASL interpreters and other auxiliary aids and services to ensure effective communications with the provision of services.

[14] CLASP Report at 48.

The LAP also lists Recommendation 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 users in non-courtroom proceedings." The CLASP Report touts the benefits of remote interpreting.We strongly caution against such encouragement in the deaf and hard of hearing context. Interpreter services can be delivered remotely, and this has been provided in the deaf and hard of hearing community through a technology known and referred to as "Video Remote Interpreting" (VRI). However, ASL is a three-dimensional language and individuals who are deaf or hard of hearing often struggle to understand ASL on a two-dimensional flat screen. For this reason, VRI is not effective for lengthy or complex situations. Court-ordered and court operated programs are usually extremely complex. The use of VRI can be confusing for some deaf or hard of hearing individuals, and lead to a belief that the deaf or hard of hearing individuals are being uncooperative leading to potentially adverse court decisions against them.

Furthermore, in a situation where CDIs may be needed, providing CDI services through VRI is not advisable due to the gestures involved and the "need for exceptionally clear visual communication."[15]Moreover, VRI is not effective at all for DeafBlind individuals who rely on tactile interpreting.

If VRI must be used for the lack of better alternatives, we recommend that it only be used with the consent of the deaf or hard of hearing user. More importantly, the entity providing the program in question must ensure that the VRI technology provides pursuant to federal law: "[r]eal-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images; sharply delineated images that are large enough to display the interpreter's face, arms, hands and fingers and the participant's face, arms, hands, and fingers, regardless of his or her body

[15]ABA Guide at 16.

position; a clear, audible transmission of voices; and adequate training for staff using the equipment in court or elsewhere on how to quickly and efficiently set up and operate the VRI."[16]

The CLASP Report acknowledges that "courts must exercise care to ensure that the use of technology is appropriate for the setting involved, that safeguards are in place for ensuring access without deprivation of due process rights, and that high quality is maintained."[17] The Council has already created guidelines on the appropriate use of VRI in California courtrooms and we urge the Council to refer to these guidelines for court-ordered/court operated programs as well.[18]

We urge the Council to incorporate the above considerations in its implementation plan and take steps to ensure that any effort to ensure meaningful access includes partnerships with deaf and hard of hearing stakeholders.

Respectfully submitted,

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[16] 28 C.F.R..§ 35.160(d)(1)–(4).*See also* Minimum Standards for Video Remote Interpreting Services in Medical Settings (Feb. 13, 2018), https://www.nad.org/about-us/position-statements/minimum-standards-for-video-remote-interpreting-services-in-medical-settings. [Although this guidance is for the medical setting, many of the same principles apply here.]

[17] CLASP Report at 20.

[18] *See* Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, Administrative Office of the Courts: Court Interpreters Program, Judicial Council of California, available at http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf ("VRI Guidelines").

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February 14, 2019

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Re: Language Access – Proposed Cal. Rule of Court 1.300
Forms LA-350, 400 and 450

Dear Ms. Glick;

On behalf of Los Angeles Dependency Lawyers, I am submitting the following comments in regards to Invitation to Comment W19-09.

We applaud the efforts of the Language Access Plan Implementation Task Force and the speed with which they are attempting to provide a response to situations such as the one identified in *In re J.P.* As you know, *J.P.* arose out of a Dependency Court matter and can only be understood in the context of Dependency Court. Our concern is that the proposed Rule of Court and the new forms, while effective in some court systems, will be ineffective in Dependency. Below, we suggest some changes to the proposed Rule but believe a preferable solution would be amending Welfare & Institutions Code (WIC) Sections 361.5(e)(1)(D)(ii), 361.5(a)(3)(B) and 366.22(b). These amendments would add Limited English Proficient Parents to the list of populations, such as detained, incarcerated, and institutionalized parents, for whom programs can be ordered only if "actual access to these services is provided", who must have a specifically tailored case plan when programs are court-ordered, and for whom the court may grant an additional reunification period due to the difficulty in accessing services. I am attaching a suggested Fact Sheet which discusses this issue and includes the actual proposed amendments. The support of, or co-sponsorship by, the Judicial Council would assist us in finding an author for such a bill which would ensure access to justice for parents speaking any of the more than 225 languages spoken in California.

That said, we propose changes to Rule 1.300 (a)(4) to read “”Limited English proficient” describes a person who speaks English “less than very well” *or* who cannot fully understand or participate in *an English language* court proceeding.” This change is recommended to reflect the difference between conversational understanding and a legal understanding of English. All of us at LADL have had clients who understand English “more or less” and can make it through a simple conversation in English. There is a vast difference between this, and understanding the legal terms and sophisticated language used by the bench. Often these parents, trying to cooperate with the system or show allegiance to the dominant culture, assert that they are “very well” able to speak English, but in post-hearing review of the court imposed requirements with their lawyer, it is clear that their understanding is woefully inadequate.

Moving on to 1.300(c). As currently drafted, it is a mere suggestion, but, in *J.P.*, the Court of Appeal has made clear that we are talking about a due process right, and due process is not a “when feasible” thing. We propose (c) read “A court shall not order a limited English proficient court litigant to a private program, service, or professional that is not language accessible or that can’t be made language accessible.”

While the worth of the forms is clear for other courts, the timelines and procedures outlined in the WIC make them impractical for use in Dependency Court where a parent’s reunification services may be terminated for lack of compliance only six months after the case plan is first ordered. Use of the LA-400 here would be argued to illegally flip the burden of tailoring the case plan to the parents, and it is unlikely that limited English parents would know to seek out or have the ability to fill in and file this form. (How many languages will it be translated into?)

I look forward to further discussion with you or anyone you might recommend. Thank you for your consideration and for the earnest work these proposals evidence.

Very truly yours,

Dennis Smeal
Chair, Legislation Committee
Supervising Attorney
LOS ANGELES DEPENDENCY LAWYERS, INC.

Item number: 49

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Electronic Filing and Service
Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257

Committee or other entity submitting the proposal:
Information Technology Advisory Committee (ITAC)

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: No. Approved by JCTC on January 14, 2019.
Project description from annual agenda: Item 13.1 on the ITAC annual agenda: Revise the California Rules of Court and statutes for the trial courts to support e-business.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-49

Title
Rules and Forms: Electronic Filing and Service

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.255, and 2.257 of the California Rules of Court. The purpose of the proposed amendments to rules 2.251 and 2.255 is to (1) specify how notice of consent to electronic service is to be given, (2) provide example language for consent, and (3) require electronic filing service providers and electronic filing managers to transmit a person's consent to the court. The proposed amendments to rules 2.251 and 2.255 originated with comments received from the Superior Court of San Diego County. The purpose of the proposed amendments to rule 2.257 is to reduce the reliance on paper for signatures on electronically filed documents and include other persons in addition to parties within the scope of the rule. The proposed amendments to rule 2.257 originated with comments received from the Department of Child Support Services and Judicial Council staff.

Background

Rule 2.251—Consent to electronic service

In 2017, the Legislature amended Code of Civil Procedure section 1010.6 (section 1010.6) to require all persons to provide express consent to electronic service. Rule 2.251(b) had allowed the act of electronic filing alone to act as evidence of consent to receive electronic service for represented persons, but the 2017 amendments to section 1010.6 eliminated this option. Section 1010.6 does, however, allow a person to provide express consent electronically by "manifesting

affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service." (Code Civ. Proc., § 1010.6(a)(2)(A)(ii).)

The Legislature did not provide for what it means to "manifest affirmative consent through electronic means." To fill this gap, the Judicial Council amended rule 2.251(b), effective January 1, 2019, to provide a process for manifesting affirmative consent through electronic means. One of the objectives was to replicate the prior process of consenting by the act of electronic filing while also ensuring, consistent with Legislative direction, that parties and other persons expressly consented. Neither section 1010.6 nor the electronic filing and service rules of court detail how notice is to be given to the court, as well as to other parties or persons in the case, that a party or other person has provided express consent. ITAC sought specific comments on these issues when the amendments to rule 2.251(b) circulated for comment in 2018. The Superior Court of San Diego County commented:

> Our court proposes that the [Information Technology Advisory Committee] create standard language for parties to consent to service by the method outlined in 2.251(b)(1)(C)(i). The court or court's electronic filing service providers could then include that language in their filing portal, which would allow parties to consent by accepting the terms. A copy of the acceptance would then be transmitted to the court by the service provider. If express consent is provided by filing a Consent to Electronic Service and Notice of Electronic Service Address (JC Form # EFS-005-CV) as indicated in 2.251(b)(1)(C)(ii), the court is provided notice through the filing. Our court proposes that the rule include that if a party manifests affirmative consent by either of the methods listed in 2.251(b)(1)(C), he/she is required to serve notice on all other parties.

Rule 2.255—Requirements electronic filing service providers and electronic filing managers

Requirements of electronic filing service providers and electronic filing managers

Rule 2.255 authorizes courts to contract with electronic filing service providers (EFSPs) and electronic filing managers (EFMs), and places requirements on EFSPs and EFMs. For example, EFSPs and EFMs must promptly transmit filings and fees to the courts and confirmation of receipt of documents to the electronic filers. Rule 2.255 does not require EFSPs and EFMs to transmit an electronic filer's consent to electronic service to the court.

Rule 2.257—Opposing parties and other persons

Signatures of opposing parties on electronically filed documents

Rule 2.257(d) governs signatures of opposing parties and requires electronic filers to use and retain printed versions of documents with ink signatures. This is a challenge for local child support agencies and the California Department of Child Support Services (DCSS) as DCSS moves toward expanding its system's electronic filing process as more courts start requiring

electronic filing. Currently, local child support agencies generate thousands of stipulations in child support cases that either are physically signed at an in-person appointment or, more often, mailed out for the signing party to review, sign, and mail back to the caseworker. This can be a protracted process, particularly when the signing party resides out-of-state or multiple signatures are needed. DCSS recommended that the rule be amended as the ability to electronically file stipulations containing electronic signatures would drastically reduce the time it takes to obtain a filed stipulation and update the child support case based on the parties' agreement.

Effective January 1, 2019, consistent with statutory requirement, the Judicial Council adopted an amendment to rule 2.257 to create a procedure for electronic signatures on electronically filed documents signed under penalty of perjury. Under that procedure—"When a document to be filed electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by that person if filed electronically provided that either of the following conditions is satisfied . . ."—the person signs with an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. (Cal. Rules of Court, rule 2.257(b)(1).) However, when an opposing party signature is required, rule 2.257(d) still requires the use and retention of a printed document.

Parties and other persons

The scope of section 1010.6 includes "other persons" in addition to parties. Some provisions of rule 2.257 refer to only parties, when it would be appropriate to include other persons.

The Proposal

Rules 2.251 and 2.255

The proposed amendments to rule 2.251 would require parties or other persons who have "manifested affirmative consent through electronic means" to serve notice of this consent on all parties and other persons. The proposal would also add an advisory committee comment citing an example of language for consenting to electronic service. The proposed amendments to rule 2.255 would require EFSPs and EFMS to promptly transmit—to the court—a party or other person's acceptance of consent to receive electronic service. The amendments would further clarify what it means to "manifest affirmative consent through electronic means" and ensure that parties, other persons, and the court receive notice that someone has done so.

Rules 2.257

The proposed amendments to rule 2.257(b) would add requirements for electronic signatures on electronically filed documents signed under penalty of perjury when the declarant is not the filer. Because electronic signatures are simple to create, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. Under the proposed requirements, the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and may be invalidated if the document signed appears to have

been altered after being electronically signed. The requirements in the proposed rule are similar to the requirements for digital signatures under Government Code section 16.5(a). A digital signature is a type of secure electronic signature that may be used in communications with public entities. (Gov. Code, § 16.5.) The first three requirements in the proposed rule are the same as for a digital signature, but the fourth is different. Under Government Code 16.5(a)(4), a digital signature must be "linked to data in such a manner that if the data are changed, the digital signature *is* invalidated." (Emphasis added.) Under the proposed rule, instead of the electronic signature being invalidated automatically, the court has discretion to decide whether the signature should be declared invalid. Also unlike a digital signature, the proposed rule does not require electronic signatures to conform to the Secretary of State's regulations, which prescribe the use of specific technologies. (Gov. Code, § 16.5(a)(5); see Cal. Code Regs., tit. 2, §§ 22000–22005.)

The proposed amendments also strike the subdivision (d) heading, "Documents requiring signatures of opposing parties," and instead incorporate the requirements from subdivision (d) into subdivision (c), which governs documents not signed under penalty of perjury. Subdivision (d) is no longer necessary for signatures of opposing parties under penalty of perjury as those requirements are captured in subdivision (b). Therefore, the only remaining requirements would be for signatures not under penalty of perjury. The existing rule on opposing parties currently requires the filer to obtain ink signatures and retain them for inspection by other parties or the court. The proposal adds an option for electronic signatures when the electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court. This option would allow for an entirely paperless process.

Finally, the proposed amendments include "other persons" within the scope of the rules. Section 1010.6 includes "other persons" in addition to parties within its scope. Accordingly, "other persons" have been added to rule 2.257 where appropriate.

Alternatives Considered

The committee considered the alternative of continuing to require the retention of ink signatures on printed forms for rule 2.257(d), but found that creating an option for an entirely paperless process would be preferable. In considering the requirements for electronic signatures by persons other than the filer, the committee considered including a requirement that the electronic signature be "linked to data in such a manner that if the data are changed, the electronic signature is invalidated." For example, if the document were changed after being electronically signed, the signature would be invalidated. However, the committee was concerned that this would remove discretion that would appropriately belong to the court and decided on changing "the electronic signature *is* invalidated" to "the electronic signature *may be* declared invalid *by the court*." (Emphases added.)

Fiscal and Operational Impacts

The proposed amendments to rules 2.251 and 2.257 should help improve the mechanics of "manifesting affirmative consent through electronic means," and should ensure the courts and litigants are aware that someone has consented to electronic service.

For rule 2.257, the idea for the proposed amendments originated with DCSS, which expects that the option to electronically file stipulations containing electronic signatures will drastically reduce the time it takes for local child support agencies to obtain a filed stipulation and update the child support case based on the parties' agreement. DCSS also expects that this will lead to increased participation by parents in their child support case, greater ability to offer technological advancements to case participants involved with the government and court, and timelier establishment or modification of parentage, child support, medical insurance, and other supplemental support for the children of California. While DCSS originated the idea, the implications are broader for all litigants. Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them should offer litigants a potentially faster and more convenient option for obtaining needed signatures.

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:

- The committee considered including a requirement that the electronic signature be "linked to data in such a manner that if the data are changed, the electronic signature is invalidated." However, the committee was concerned that this would remove authority that would appropriately belong to the court and decided on changing "the electronic signature *is* invalidated" to "the electronic signature *may be* declared invalid *by the court*." Is the proposed language preferable? Is the particular requirement necessary?

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) or revising processes and procedures (please describe)?

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.255, and 2.257, at pages 6–9
2. Link A: Code Civ. Proc., § 1010.6, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP*

Rules 2.251, 2.255, and 2.257 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 2.251. Electronic service

(a) * * *

(b) Electronic service by express consent

(1) A party or other person indicates that the party or other person agrees to accept electronic service by:

(A) Serving a notice on all parties and other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or

(B) Manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic service address with that consent for the purpose of receiving electronic service. A party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:

~~(C) A party or other person may manifest affirmative consent under (B) by:~~

(i) Agreeing to the terms of service ~~agreement~~ with an electronic filing service provider, which clearly state~~s~~ that agreement constitutes consent to receive electronic service ~~electronically~~; or

(ii) Filing Consent to Electronic Service and Notice of Electronic Service Address (form EFS-005-CV).

(2) * * *

(c)–(k) * * *

Advisory Committee Comment

Subdivisions (b)(1)(B). The rule does not prescribe specific language for a provision of a term of service where the filer consents to electronic service, but does require that any such provision be clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) provides an example of language for consenting to electronic service.

Subdivisions (c)–(d). * * *

Rule 2.255. Contracts with electronic filing service providers and electronic filing managers

(a)–(b) * * *

(c) Transmission of filing to court

(1) An electronic filing service provider must promptly transmit any electronic filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent to receive electronic service to the court directly or through the court's electronic filing manager.

(2) An electronic filing manager must promptly transmit an electronic filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent to receive electronic service to the court.

(d)–(f) * * *

Rule 2.257. Requirements for signatures on documents

(a) Electronic signature

An electronic signature is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

(b) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by that person if filed electronically provided that either of the following conditions is satisfied:

(1) The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court; or

(2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that the original, signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:

(A) At any time after the electronic version of the document is filed, any party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

(B) Within five days of service of the demand under (A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

(C) At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(D) Notwithstanding (A)–(C), local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.

(c) Documents not signed under penalty of perjury

(1) If a document does not require a signature under penalty of perjury, the document is deemed signed by the ~~party if the document is~~ person who filed electronically.

~~**(d) Documents requiring signatures of opposing parties**~~

(2) When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties or other persons not under penalty of perjury, the following procedures ~~applies~~ apply:

~~(1)~~(A) ~~The party filing the document must obtain the signatures of all parties on a printed form of the document.~~ The opposing party or other person has signed a printed form of the document before, or on the same day as, the date of filing.

~~(2)~~ The ~~party filing the document~~ electronic filer must maintain the original, signed document and must make it available for inspection and copying as provided in ~~(a)~~(b)(2) of this rule and Code of Civil Procedure section 1010.6. The court and any other party may demand production of the original signed document in the manner provided in ~~(a)~~(b)(2)(A–C).

~~(3)~~ By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession~~.~~; or

(B) The opposing party or other person has signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court.

~~(e)~~(d) Digital signature

A party or other person is not required to use a digital signature on an electronically filed document.

~~(f)~~(e) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Item number: 50

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Remote Access to Electronic Records by Government Entities
Amend Cal. Rules of Court, rule 2.540

Committee or other entity submitting the proposal:
Information Technology Advisory Committee (ITAC)

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: No. Approved by JCTC on January 14, 2019.
Project description from annual agenda: Item 13.1 on the ITAC annual agenda: Revise the California Rules of Court and statutes for the trial courts to support e-business.

If requesting July 1 or out of cycle, explain:

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

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

INVITATION TO COMMENT

SPR19-50

Title
Rules and Forms: Remote Access to Electronic Records by Government Entities

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 2.540

Proposed Effective Date
January 1, 2020

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee recommends that the Judicial Council amend rule 2.540 of the California Rules of Court to add "county public administrator" and "county public conservator" to the list of government entities that may be granted remote access to certain electronic records, and make a minor amendment to the good cause provision of the rule. The purpose of the proposal is to make the rule clearer and more comprehensive based on comments received when the rule was originally circulated for public comment in 2018.

Background

Rule 2.540 is one of several new rules addressing remote access to electronic records by government entities that went into effect January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. It was geared toward government entities that have a high volume of business before the court with respect to certain case types. The rule includes a good cause provision under which a court may grant remote access to electronic court records to additional government entities and case types beyond those specifically identified in the rule. The standard for good cause is "the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation." (Cal. Rules of Court, rule 2.540(b)(1)(O).)

The Proposal

The proposal would add county public administrator and county public conservator to the list of government entities in rule 2.540(b)(1). Under the amendments, courts could permit (1) the county public administrator to have remote access to probate electronic records, and (2) the county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for the county public administrator is tailored to electronic records relevant to administering decedents' estates. Remote access for the county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person. In addition, the proposal would amend the good cause provision under rule 2.540(b)(1). The current rule allows courts to permit remote access to additional government entities not otherwise listed in rule 2.540(b)(1) when there is good cause to do so. Good cause means that "the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation." (Cal. Rules of Court, rule 2.540(b)(1)(O).) The proposal amends "statutory duties" to "legal duties." The purpose of the amendments to rule 2.540(b)(1) is to make the rule clearer and more comprehensive.

Alternatives Considered

The committee did not consider the alternative of maintaining the status quo as the amendments provide more clarity and make the rule more comprehensive.

Fiscal and Operational Impacts

Adding the county public administrator and county public conservator to the list of government entities the court may allow to remotely access electronic records will remove a need to make a good cause finding for those entities. The amendments are not expected to result in any costs.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Cal. Rules of Court, rule 2.540, at page 3
2. Link A: Existing text of Cal. Rules of Court, rule 2.540, *https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_540*

Rule 2.540 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 2.540. Application and scope

(a) Applicability to government entities

The rules in this article provide for remote access to electronic records by government entities described in (b). The access allowed under these rules is in addition to any access these entities or authorized persons working for such entities may have under the rules in articles 2 and 3.

(b) Level of remote access

(1) A court may provide authorized persons from government entities with remote access to electronic records as follows:

(A)–(M) * * *

(N) County public conservator: criminal electronic records, mental health electronic records, and probate electronic records.

(O) County public administrator: probate electronic records.

~~(N)~~(P) Federally recognized Indian tribe (including any reservation, department, subdivision, or court of the tribe) with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.

~~(O)~~(Q) For good cause, a court may grant remote access to electronic records in particular case types to government entities beyond those listed in (b)(1)(A)–(P)~~(N)~~. For purposes of this rule, "good cause" means that the government entity requires access to the electronic records in order to adequately perform its ~~statutory~~ legal duties or fulfill its responsibilities in litigation.

~~(P)~~(R) All other remote access for government entities is governed by articles 2 and 3.

(2)–(3) * * *

(c) * * *

Item number:51

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

Committee or other entity submitting the proposal:
Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee: Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 and 5.485; renumber rules 5.486 and 5.487; adopt forms ICWA-070, ICWA-080, and ICWA-90; revise forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600

Staff contact (name, phone and e-mail): Ann Gilmour, 415-865-4207 ann.gilmour@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: Item 1n on the Family and Juvenile Law Advisory Committee Annual Agenda: Legislative Changes from the 2017-2018 Legislative Session.Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration: n. AB 3176 (Waldron) Indian children (Ch. 833, Statutes of 2018) Updates the Indian Child Welfare Act provisions in the Welfare and Institutions Code in order to comply with recent Federal Bureau of Indian Affairs regulations.

From the Tribal Court–State Court Forum annual agenda approved by the Executive and Planning Committee on March 13, 2019: Item 1:Implement Assembly Bill 3176 Indian Children (Waldron; Stats. 2018, ch. 833) Project Summary: AB 3176 Indian Children, amends provisions of the Welfare and Institutions Code to conform California law to the requirements of the federal Indian Child Welfare Act Regulations and Guidelines adopted in 2016. The legislation directs the Judicial Council to enact rules and forms necessary to implement the legislation.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-51

Title
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484and 5.485, renumber 5.486 and 5.487; adopt forms ICWA-070, ICWA-080, and ICWA-90; revise forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600

Proposed by
Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

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

Action Requested
Review and submit comments by Monday June 10, 2019

Proposed Effective Date
January 1, 2020

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Executive Summary and Origin

The Tribal Court–State Court Forum (forum) and the Family and Juvenile Law Advisory Committee recommend adopting a new rule of court, amending several other California Rules of Court, and revising several forms for Indian Child Welfare Act (ICWA) and juvenile court

dependency proceedings to comply with statutory changes in Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833) as well as changes to governing federal regulations and guidelines. The proposal also addresses technical amendments and corrections, and responds to several appellate court decisions regarding ICWA rules and forms.[1]

Background

The federal Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.) was enacted in 1978 and establishes minimum federal standards that apply in all state court proceedings involving an Indian child where the child could be involuntarily placed in the custody of a nonparent, or where the parental rights of a parent could be terminated. In 2006, California enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) to substantially incorporate provisions of ICWA into the California Family Code, Probate Code, and Welfare and Institutions Code. Following enactment of SB 678, the Judicial Council adopted implementing rules of court and forms.[2] Those rules and forms have not been comprehensively amended or revised since that time. Some of the rules and forms have been updated, but only when necessary to comply with legislative changes or appellate court decisions. Other nonurgent suggestions for corrections or improvements to the rules and forms have been noted, following the practice that these nonurgent issues can be addressed when the rules and forms are being amended or revised.

In 2016, the federal government for the first time since 1979 finalized comprehensive regulations and issued updated guidelines implementing ICWA.[3] In some areas, the regulations and guidelines were inconsistent with existing California law and practice. In addition, in 2017, the California ICWA Compliance Task Force presented its report to Attorney General Xavier Becerra.[4] The report identified various concerns from tribes and tribal representatives about how ICWA was being interpreted and applied in California.

On September 27, 2018, Governor Brown signed AB 3176–Indian Children,[5] to (1) address issues identified in the California ICWA Compliance Task Force Report, and (2) conform California law to the requirements of the new federal ICWA regulations and guidelines. The bill makes important revisions to California law including clarifying "… the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child's possible status as an Indian child…" and revising "…the various notice requirements that are mandated during an Indian child custody proceeding, including a proceeding for an emergency removal of an Indian child from the custody of his or her parents or Indian custodian." The bill directs the Judicial Council to adopt any forms or rules of court necessary to implement these provisions.

While the new federal ICWA regulations and guidelines apply to all proceedings governed by ICWA, including those that may arise under the California Family and Probate codes, AB 3176

[1] *In re. E.H.* (2018) 26 Cal.App.5th[t] 1058; *In re. J.Y.* (2018) 30 Cal.App.5th 712.
[2] That rules and forms proposal was adopted by the Judicial Council at a meeting on October 26, 2007. The proposal was item A27 in Volume 1 of the materials and is available here.
[3] The regulations are available at 25 C.F.R. § 23, and the guidelines are available here.
[4] The report is available here.
[5] *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*

only amends the California Welfare and Institutions Code. In some instances, those provisions of the Welfare and Institutions Code are incorporated by reference in the Family and Probate codes. To avoid multiple rules amendments and forms revisions, this proposal includes changes to ICWA rules and forms that apply to all case types governed by ICWA required by the federal regulations and guidelines as well as revisions to juvenile rules and forms that are specifically required by AB 3176. The proposal also encompasses amendments to rules and revisions to forms required by appellate decisions and suggested by commentators since the rules and forms were last amended or revised.

Finally, while the identified rules and forms were being amended or revised, they were examined to determine whether amendments or revisions were appropriate in order to be more gender neutral consistent with the spirit of the Gender Recognition Act–SB 179 (Atkins; Stats. 2017, ch. 853). The questions about a child's sex found at item 1e of the JV-100, *Juvenile Dependency Petition (Version One)*, and item 1b of the JV-110, *Juvenile Dependency Petition (Version Two)* were identified as being high priority to assess whether it would be possible to change the question from "sex" to "gender" and to add instructions that gender can include nonbinary.

The Proposal

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rules 5.480 through 5.483, and rules 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 and 5.485; renumber rules 5.486 and 5.487; and adopt rule 5.484 to conform them to the statutory changes in AB 3176, and to clarify procedures and legal requirements.

2. Adopt Indian Child Welfare Act forms ICWA-70, ICWA-80, and ICWA-90; revise existing Indian Child Welfare Act and juvenile forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600.

The text of the proposed changes to the California Rules of Court are attached at pages 14–34. Proposed forms for adoption or revision are found at pages 35–138.

The proposed changes are, for the most part, required by the passage of AB 3176 and the new federal regulations and guidelines, and are urgently needed to conform to these recent changes in the law. Those that are not directly required by these legal changes are either (1) in response to specific issues and recommendations in the California ICWA Compliance Task Force Report, (2) in response to issues identified in appellate decisions, or (3) changes that make minor or technical amendments identified by practitioners and justice partners.

The federal regulations and guidelines and AB 3176 make significant changes to prior law and practice reflected in the proposal in several key areas.

The proposal will benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act and conforming California practice to the requirements of federal and state law—thus reducing confusion and appeals.

Amendment to rule 5.480

This is a minor technical amendment intended to reflect the four distinct proceedings set out in the federal and state laws to which the ICWA requirements apply. As currently drafted, the rule does not include "preadoptive placements" that are specifically discussed in ICWA.

Amendment to rule 5.481

The proposed amendments implement changes to ICWA inquiry and notice requirements made by the federal ICWA regulations and AB 3176 amendments to Welfare and Institutions Code section 224.2. The proposed amendments:

- Add in paragraph (1) extended family members and others who have an interest in the child, including a party reporting child abuse or neglect, to those who must be asked whether or not the child may be an Indian child[6];
- Add to paragraph (2) a question about whether the residence or domicile of the child, parents, or Indian custodian is on a reservation or Alaska Native Village;[7]
- Clarify that at the first appearance all participants to a case must be asked whether they know or have reason to know the child is an Indian child, and the court must instruct them to inform the court if they subsequently receive information that provides reason to know;
- Set out the obligation to conduct further inquiry when there is "reason to believe" the child is an Indian child; [8]
- Amend what gives the court "reason to know" the child is an Indian child;[9]
- Set out the evidence that must be provided concerning efforts to work with the child's tribe(s) to determine the child's status when the petitioner had reason to know the child is an Indian child;
- Authorize the court to find that the child is not an Indian child if—based on the evidence of the efforts to work with the child's tribe(s)—the court is able to conclude that there is no "reason to know" the child is an Indian child;[10] and

[6] Welf. & Inst. Code, § 224.2(b), as amended by AB 3176.
[7] *Id.*
[8] Note that AB 3176 creates two different levels of knowledge about Indian status, with different obligations attaching to each of them. Section 224.2(e) of the Welf. & Inst. Code states that if there is "reason to believe" that an Indian child is involved, there is a duty of "further inquiry." The specific steps of further inquiry include interviewing parents and extended family members and contacting the Bureau of Indians Affairs and potential tribes or others to gather information. Further inquiry must include sharing with tribes information identified by the tribe as necessary for the tribe to make a membership or eligibility determination. The level of information that provides "reason to believe" is not defined in the statute. "Reason to know" is defined at § 224.2(d) and essentially tracks the language in 25 C.F.R. § 23.107(c). Only when there is "reason to know" as set out in § 224.2(d) is formal ICWA notice required under § 224.2(f).
[9] Welf. & Inst. Code, § 224.2(d), as amended by AB 3176.
[10] Welf. & Inst. Code, § 224.2(i)(2).

- Clarify that notice by registered or certified mail (return receipt requested) is only required for specified hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child when it is known or there is reason to know the child is an Indian child.[11]

Amendment to rule 5.482

To implement the amendments to provisions governing ICWA notice in AB 3176 at section 7 (Welf. & Inst. Code, § 224.3):

- Clarify that formal ICWA notice, including the requirement to wait 10 days until after receipt of such notice, is only required for hearings, other than "emergency proceedings" that could result in an order for the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child;[12]
- Remove reference to the detention hearing in a dependency case, as this is now dealt with under rule 5.668; and
- Remove subdivision (c) authorizing a finding that the child is not an Indian child if proper notice has been given and no determinative response is received within 60 days, as the code provision that authorized this finding has been repealed by AB 3176.

Amendment to rule 5.483

The proposed amendments, which are required by the federal regulations and complementary changes in AB 3176 found in the amended section 305.5 of the Welfare and Institutions Code:

- Clarify that where a tribe has exclusive jurisdiction, the state court proceedings must be dismissed, rather than being transferred to the tribal court, subject only to the terms of any agreement that may have been reached between the state and the tribe under section 1919 of ICWA;
- Clarify the court's duty to notify the tribe and tribal court of its intention to dismiss a case due to the tribe's exclusive jurisdiction; and
- Amend what constitutes good cause to deny a request to transfer a case to tribal court when there is concurrent jurisdiction.

Adoption of rule 5.484

The new federal regulations, as set forth in 25 Code of Federal Regulations part 23.113 and implemented in AB 3176,[13] necessitate adoption of a new rule that will replace rule 5.484 and require that current rules 5.484 through 5.487 be renumbered. The proposed new rule addresses the specific requirements related to emergency proceedings and emergency removals of an Indian child set out in the new federal regulations at 25 Code of Federal Regulations part 23.113

[11] Section 224.3(a) states that formal ICWA notice need be only for these specified hearings, rather than for every hearing, when it is known or there is reason to know the child is an Indian child.
[12] See amended § 224.3(a) and (d).
[13] See amended Welf. & Inst. Code, § 224.1(l) defining "emergency proceeding" to include an initial hearing under § 319 as well as amended § 306(c), including temporary custody by an agency as an "emergency removal," and the requirements contained in amended § 319(b)–(e).

and implemented in AB 3176 through various amendments to the Welfare and Institutions Code. Because the requirements of 25 Code of Federal Regulations part 23.113 apply generally to all cases governed by ICWA, the proposal is to add this to the ICWA rules, in addition to making specific changes (see below) to the juvenile rules governing detentions.

The proposed rule 5.484 addresses the requirements of the federal regulations and AB 3176, including:

- Clarifying the standards and required court findings for detention of a child when it is known or there is reason to know the child is an Indian child;
- Clarifying the specific evidence that must be presented to the court to support a removal or detention when it is known or there is reason to know the child is an Indian child;
- Establishing a process for requesting a hearing to seek return of the child when there is new information indicating that the emergency situation that justified initial removal has ended; and
- Addressing the limitations on how long an emergency proceeding can last.

Amendment and renumbering of former rule 5.484 to rule 5.485
In addition to renumbering, the following changes must be made for conformity with the updated federal guidelines:

- Amendments to how the court must analyze whether there has been compliance with the placement preferences and whether there is good cause, as defined in 25 Code of Federal Regulations parts 23.130–23.132, to deviate from those preferences; and
- Amendments to the requirements and analysis of "active efforts" to reflect the definition of active efforts contained in 25 Code of Federal Regulations part 23.2 and the requirements of documenting active efforts set out in 25 Code of Federal Regulations part 23.120.

Amendment and renumbering of former rule 5.485 to rule 5.486
In addition to renumbering, the proposed amendment to former rule 5.485 addresses comments from the California Department of Social Services and other practitioners suggesting that the existing rule was not consistent with ICWA and state law. The proposed amendments include:

- The requirement that evidence must show not only that active efforts were made but also that those active efforts were unsuccessful before parental rights can be terminated, consistent with the requirements of ICWA and state law; and
- Recognition of additional circumstances set out in state law that may constitute a compelling reason to determine that termination of parental rights is not in an Indian child's best interest.

Renumbering of former rule 5.486 to rule 5.487 and former rule 5.487 to rule 5.488
The proposal would only renumber these rules and not make any substantive amendments.

Amendment to rule 5.570
After the most recent amendment to rule 5.570 in spring 2009, a commenter noted that the rule, as amended, was not consistent with the requirements of ICWA and California law, by failing to draw a distinction between the requirements for reasonable efforts generally and active efforts when the case involves an Indian child. The commenter was correct. However, the change was not made at the time because it was a substantive change that required the rule to circulate for comment.

Amendment to rule 5.668
The federal regulations and AB 3176 at amended section 224.2 of the Welfare and Institutions Code require certain specific steps to be taken to determine a child's Indian status at the commencement of each "proceeding." Rule 5.668 governs the commencement of the initial hearing, and the explanation of the proceedings. It includes requirements concerning inquiry about parentage. The proposal would add to the rule the specific requirements on ICWA inquiry language that sets forth what is required at an initial hearing on a juvenile petition.

Amendment to rule 5.674
This rule governs the conduct of the detention hearing and includes the findings and orders that must be made on the record. Welfare and Institutions Code section 309(a)(3), as amended by AB 3176, requires a modified detention finding on the record when the child is, or there is reason to know the child is, an Indian child. To implement this amendment to section 309(a)(3), it is proposed the rule be amended to require the court to find that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected without detention. This reflects the new requirements enacted by the new federal ICWA regulations and AB 3176.

Amendment to rule 5.676
Rule 5.676 governs the requirements for the court to order a child detained. The proposed amendment adds to the requirements for detention when it is known, or there is reason to know, the child is an Indian child. These requirements are set out in Welfare and Institutions Code sections 309 and 319, as amended by AB 3176.

Amendment to rule 5.678
Rule 5.678 governs the findings that must be made to support a detention order, the factors the court must consider, whether or not the agency has made appropriate efforts, and any alternatives to detention that should be considered. To comply with the requirements of AB 3176, the following amendments are proposed:

- Include the additional findings now required by Welfare and Institutions Code section 319(c)(2) and (d) to support detention if the child is, or there is reason to know that the child is, an Indian child;
- Include the requirements for active efforts findings to support detention when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code sections 306(e)(4), 319(f)(2), and 361.7;

- Include reference to the placement preferences that must be followed when an Indian child is removed, even on an emergency basis, consistent with amended section 319(h)(C) of the Welfare and Institutions Code;
- Reference the time limitations that apply to a removal when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code section 319; and
- Include a provision for a hearing to return custody of the child if the emergency that supported initial removal has ended, as required by Welfare and Institutions Code section 319.4.

Amendment to rule 5.690

This rule governs the general conduct of a disposition hearing. The proposed amendments respond to changes in Welfare and Institutions Code section 309 resulting from AB 3176: specifically, the provision mandating evidence that efforts have been made to locate extended family as that term is specifically defined for an Indian child under Welfare and Institutions Code section 224.1; and to locate placements through the tribe as discussed in amended section 309(e)(1) and (e)(1)(B) of the Welfare and Institutions Code.

Amendment to rule 5.725

This rule governs the selection of a permanent plan. The proposed amendment to this rule responds to the decision of the Court of Appeal, Third Appellate District, in *In re J.Y.* (2018) 30 Cal.App.5th 712, which holds that rule 5.725(e) is invalid as inconsistent with statute, specifically section 366.26 of the Welfare and Institutions Code, to the extent that it implies that an order of the court concerning an adoption or tribal customary adoption is final prior to the entry of the final order of adoption. The Court of Appeal held that the order only becomes final once the order of adoption has been issued.

Revision to ICWA-005-INFO[14]

The proposed revisions include suggestions by commentators, as well as general technical corrections and substantive changes in response to AB 3176. The main revisions are changes to the explanation of the obligations to contact a tribe and provide information in response to the changes to section 224.2(e)(3) of the Welfare and Institutions Code contained in AB 3176.

Revision to ICWA-020

The proposal is to revise the questions asked of parents to more closely follow the inquiry required in the federal regulations and section 224.2 of the Welfare and Institutions Code, as amended by AB 3176. Significantly, the proposal would remove the questions about whether the parents or child have Indian ancestry and instead focus on information about tribal membership or eligibility.

[14] All changes to forms are highlighted in yellow in the attachements.

Revision to ICWA-030
The proposed revisions would include a section to provide Indian ancestry information of "direct lineal ancestors," as required by the regulations and the decision of the Court of Appeal in *In re E.H.* (2018) 26 Cal.App.5th[t] 1058.

Revision to ICWA-040
The proposed revisions respond to comments that the form was confusing in attempting to address both designation of tribal representative and tribal intervention in one form. The proposal would have the designation of a tribal representative as a standalone form.

Revision to ICWA-060
The proposed revisions reflect the changes in the federal regulations and AB 3176 as to what can be considered as good cause not to transfer a case to tribal court.

Adoption of ICWA-070, ICWA-080, and ICWA-090
Section 23 of AB 3176 directs the Judicial Council to develop a rule of court and forms to implement the requirement that a party may request an ex parte hearing for return of an Indian child detained on an emergency basis as necessary to prevent imminent physical damage or harm to the child. Although AB 3176 only applies to juvenile proceedings, it is based on a provision in the new federal regulations (25 C.F.R. § 23.113) that mandates the state court have a process for a hearing on whether emergency removal or placement continues to be necessary. Therefore, it was decided to create a process and adopt forms that would apply generally to all ICWA cases, consistent with the federal regulatory requirements. The proposal would make these forms mandatory rather than optional. Because ICWA cases may involve tribes from across the state and the country, a unified consistent statewide practice is important.

Revisions to JV-100, JV-110, and JV-600
The proposed revisions to these juvenile dependency and juvenile wardship petitions relate to the required ICWA inquiry and respond to comments received from judicial officers and others. As currently drafted, item 2 on the form requires the individual filing the petition to affirm that they have personally completed inquiry about the child's Indian ancestry and completed the attached ICWA-10(A) form. It does not provide the petitioner with the option of explaining that inquiry may not yet have been possible or that inquiry may have been completed by someone other than the individual filing the petition. Commentators stated that this does not reflect the reality of many situations in which it may not have been possible for the inquiry to be completed prior to filing the petition. Further, often a petition is filed by county counsel on behalf of an agency, but inquiry will have been completed by a social worker rather than personally by the county counsel. The proposed revisions address this by adding an option for explaining that inquiry has not yet been completed, and allowing the information about inquiry to be completed on information and belief.

Revision to JV-320
These revisions add specific findings when it is known or there is reason to know the case involves an Indian child. The proposed additions include:

- Findings that the evidence has included specific elements required under the regulations and AB 3176;
- Findings that the analysis and evidence required under the regulations and AB 3176 have been provided concerning the placement of an Indian child; and
- Specific findings on the nature of the active efforts provided by the agency required to support termination of parental rights for an Indian child.

The purpose of the revisions is to ensure that all ICWA requirements are considered and necessary findings and orders documented.

Revision to JV-405

This form is used following a continuance of the detention hearing in a dependency case. The proposed revisions primarily address the required ICWA inquiry and the court's findings as to whether or not there is reason to know that the child is an Indian child.

Revision to JV-410

This form documents the findings and orders required at a detention hearing. The proposed revisions include:

- Findings regarding ICWA inquiry and ICWA status;
- Findings regarding the court's jurisdiction when there is reason to know the case involves an Indian child;
- Findings regarding placement when there is reason to know the child is an Indian child; and
- Findings regarding active efforts when there is reason to know the child is an Indian child.

Revisions to JV-412

The proposed revision would add the requirement regarding ICWA notice whenever it is known, or there is reason to know that the child is an Indian child because the jurisdictional hearing is among those that AB 3176 specifies require ICWA notice.

Revisions to JV-415 and JV-418

The proposed revisions add the required active efforts finding if it is known or there is reason to know the child is an Indian child.

Revision to JV-421

The proposed revisions add the required ICWA findings and evidentiary elements with a goal of ensuring that the correct analysis is applied, and the required evidentiary elements are included, and findings and orders are made.

Revision to JV-430
The proposed revisions add requirements regarding active efforts when it is known or there is reason to know the child is an Indian child.

Revision to JV-432
The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

Revision to JV-433
The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

Revision to JV-435
The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

Revision to JV-437
The proposed revisions add required findings and orders regarding ICWA placement preferences.

Revision to JV-438
The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

Revision to JV-440
The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

Revision to JV-442
The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

Revision to JV-443
The proposed revisions add required findings and orders regarding compliance with ICWA placement preferences.

Revision to JV-455
The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

Revision to JV-457
The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

The proposal will benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act and conforming California practice to the requirements of federal and state law, thus reducing confusion and appeals.

Alternatives Considered

The committees considered whether rules and forms were required and concluded that they were, based upon the direction from the Legislature and the fact that the existing rules and forms were out of date and no longer consistent with the law.

Fiscal and Operational Impacts

There will be fiscal and operational impacts as courts, justice partners, and litigants adjust to the new requirements and update their existing forms and practices. However, these impacts and burdens are required to comply with federal and state law and cannot be avoided. The benefits of complying with the law and avoiding appellate reversals will outweigh the potential costs.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the questions about Indian status in the proposed revision to form ICWA-020, *Parental Notification of Indian Status Form*, broad enough to ensure that Indian children are identified?
- Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 of form JV-410 correctly reflect the distinction between "reason to believe" and "reason to know," and the obligations triggered by each level of information?
- Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?
- Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary?

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 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, 5.487, 5.488, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725, at pages 14–34
2. Forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, ICWA-070, ICWA-080, ICWA-90, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600, at pages 35–138

Rule 5.484 of the California Rules of Court would be adopted, rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668, 5.674, 5.676, 5.678, and 5.690 would be amended, rules 5.484 and 5.485 would be amended and renumbered, and 5.486 and 5.487 would be renumbered, effective January 1, 2020, to read:

Rule 5.480. Application

This chapter addressing the Indian Child Welfare Act (25 United States Code section 1901 et seq.) as codified in various sections of the California Family, Probate, and Welfare and Institutions Codes, applies to most proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; preadoptive placement or adoptive placement. This chapter applies to:

* * *

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party reporting child abuse or neglect whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or Alaska Native Village, and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.

(2) At the first appearance by a parent, Indian custodian, or guardian, and all other participants in any dependency case; or in juvenile wardship

proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, or adoption proceeding; the court must:

(A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child; and

(C) ~~o~~Order the parent, Indian custodian, or guardian if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) * * *

(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to ~~know~~ believe that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code sections 1901 and 1903(2) , to gather the information listed in Welfare and Institutions Code section 224.2(a) (5), Family Code section 180(b) (5), or Probate Code section 1460.2(b) (5)~~, which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)~~;

(B) * * *

(C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility. These contacts must at a minimum include the contacts listed in Welfare and Institutions Code section 224.2 (e)(3).

The petitioner must include in its filings a detailed description of all inquiries, further inquiries it has undertaken, and all information received pertaining to the child's Indian status.

~~(5) The circumstances that may provide reason to know the child is an Indian child include the following:~~

~~(A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator~~

~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or~~

~~(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.~~

(b) Reason to know the child is an Indian child

(1) The court has reason to know the child is an Indian child if:

(A) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village;

(C) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(D) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(E) The court is informed that the child is or has been a ward of a tribal court; or

(F) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) When there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership. Due diligence must include the further inquiry and tribal contacts discussed in (a)(4) above.

(3) Upon review of the evidence of due diligence, further inquiry, and tribal contacts, if the court concludes that the agency or other party has fulfilled its duty of due diligence, further inquiry, and tribal contacts, the court may:

(A) Find that there is no reason to know that the child is an Indian child and that the Indian Child Welfare Act does not apply. Notwithstanding this determination, if the court or a party subsequently receives information that was not previously available relevant to the child's Indian status, the court must reconsider this finding.

(B) Find that it is known or there is reason to know that the child is an Indian child, order notice in accordance with (c) below, and treat the child as an Indian child unless and until the court determines on the record that the child is not an Indian child.

(c) Notice

(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2 for all hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(2)–(4) * * *

Rule 5.482. Proceedings after notice

(a) Timing of proceedings

(1) If it is known or there is reason to know that a child is an Indian child, the court hearing that may result in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, except as stated in sections (a)(2) and (3).

~~(2) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster care described by rule 5.480(2) (A) - (C) may proceed without delay, provided that:~~

~~(A) Notice of the detention hearing must be given as soon as possible after the filing of the petition initiating the proceeding; and~~

~~(B) Proof of notice must be filed with the court within 10 days after the filing of the petition.~~

~~(3) The parent, Indian custodian, or tribe must be granted a continuance, if requested, of up to 20 days to prepare for the proceeding, except for specified hearings in the following circumstances:~~

~~(A) The detention hearing in dependency cases and in delinquency cases described by rule 5.480(2) (A) - (C);~~

~~(B) The jurisdiction hearing in a delinquency case described by rule 5.480(2) (A) - (C) in which the court finds the continuance would not conform to speedy trial considerations under Welfare and Institutions Code section 657; and~~

~~(C) The disposition hearing in a delinquency case described by rule 5.480(2) (A) - (C) in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.484 when holding the disposition hearing.~~

(b) Proof of notice

* * *

~~**(c) When there is no information or response from a tribe**~~

~~(1) If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the Indian Child Welfare Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.~~

~~(2) If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.~~

~~(3) The court is not required to delay proceedings until a response to notice is received.~~

(d) Intervention

The Indian child's tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings. ~~and~~ The tribe may, but ~~are~~ is not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene.

(e)–(f) * * *

Rule 5.483. Dismissal and transfer of case

(a) ~~Mandatory transfer of case to tribal court with~~ Dismissal when tribal court has exclusive jurisdiction

~~The court must order transfer of a case to the tribal court of the child's tribe if:~~ Subject to the terms of any agreement between the state and the tribe pursuant to 25 United States Code section 1919:

(1) If the court receives information suggesting that the Indian child is a ward of ~~the~~ a tribal court or is domiciled or resides within a reservation of an Indian

tribe that has exclusive jurisdiction over Indian child custody proceedings under section 1911 or 1918 of title 25 of the United States Code, the court must expeditiously notify the tribe and the tribal court that it intends to dismiss the case upon receiving confirmation from the tribe or tribal court that the child is a ward of the tribal court or subject to the tribe's exclusive jurisdiction.

(2) When the court receives confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the state court shall dismiss the proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record. If the local agency has not already transferred physical custody of the Indian child to the child's tribe, the state court shall order that the local agency do so forthwith and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe.

(3) This section does not preclude an emergency removal.

(b)–(c) * * *

(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction

(1) ~~One or more~~ Either of the following circumstances constitutes mandatory good cause to deny a request to transfer:

(A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record; or

~~(B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or~~

(~~C~~B) The tribal court of the child's tribe declines the transfer.

(2) ~~One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer~~ In assessing whether good cause to deny the transfer exists, the court must not consider:

~~(A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery;~~

~~(B) The proceeding was at an advanced stage when the request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;~~

~~(C) The Indian child is over 12 years of age and objects to the transfer; or~~

~~(D) The parents of a child over five years of age are not available and the child has had little or no contact with his or her tribe or members of the child's tribe.~~

(A) Whether the foster care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage;

(B) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(C) Whether transfer could affect the placement of the child;

(D) The Indian child's cultural connections with the tribe or its reservation; or

(E) Socioeconomic conditions or any negative perception of tribal or BIA social services or judicial systems.

(3) * * *

~~**(e) Evidentiary considerations**~~

~~The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.~~

(~~f~~e) Evidentiary burdens

* * *

(g~~f~~) Order on request to transfer

* * *

(~~h~~g) Advisement when transfer order granted

* * *

(~~i~~h) Proceeding after transfer

* * *

Rule 5.484. Emergency proceedings involving an Indian child

(a) Standards for removal

Whenever it is known or there is reason to know that the case involves an Indian child, the court may not order an emergency removal or placement of the child without a finding that the removal or placement is necessary to prevent imminent physical damage or harm to the child.

Whenever it is known or there is reason to know that the case involves an Indian child, the petition requesting emergency removal or continued emergency placement of the child or its accompanying documents must contain the following:

(1) A statement of the risk of imminent physical damage or harm to the child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child;

(2) The name, age, and last known address of the Indian child;

(3) The name and address of the child's parents and Indian custodians, if any;

(4) The steps taken to provide notice to the child's parents, custodians, and tribe about the emergency proceeding;

(5) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them;

(6) The residence and the domicile of the Indian child;

(7) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native Village, the name of the tribe affiliated with that reservation or village;

(8) The tribal affiliation of the child and of the parents or Indian custodians;

(9) A specific and detailed account of the circumstances that led to the emergency removal of the child;

(10) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(11) A statement of the efforts that have been taken to assist the parents or Indian custodian so the Indian child may safely be returned to their custody.

(b) Return of Indian child when emergency situation has ended

Whenever it is known or there is reason to know that the child is an Indian child and there has been an emergency removal of the child from parental custody, any party who asserts that there is new information indicating that the emergency situation has ended may request an ex parte hearing by filing a request in form ICWA-070 to determine whether the emergency situation has ended;

If the request provides evidence of new information establishing that the emergency placement is no longer necessary, the court shall promptly schedule a hearing. At the hearing the court shall consider whether the child's removal and placement is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the child's emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child, the court shall order the child returned to the physical custody of the parent or parents of Indian custodian.

(c) Time limitation on emergency proceedings

An emergency removal shall not continue for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(3) It has not been possible to have a hearing that complies with the substantive requirements of the Indian Child Welfare Act for a foster care placement proceeding.

Rule 5.4845. Placement of an Indian child

(a) * * *

(b) Standards and preferences in placement of an Indian child

(1) Unless the court finds good cause to deviate from them ~~the contrary~~, whenever it is known or there is reason to know the child is an Indian child, all placements ~~of Indian children~~ in any proceeding listed in rules 5.480 and 5.484 must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.

(2) The court must analyze the availability of placements within the placement preferences in descending order without skipping. The court may deviate from the preference order only for good cause, which may include the following considerations:

(A) The requests of the parent or Indian custodian if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(B) The requests of the Indian child, when of sufficient age and capacity to understand the decision being made;

(C) The presence of a sibling attachment that can be maintained only through a particular placement;

(~~C~~D) The extraordinary physical or emotional needs of the Indian child including specialized treatment services that may be unavailable in the

community where families who meet the placement preferences live ~~as established by a qualified expert witness~~; or

(~~D~~E) The unavailability of suitable families within the placement preferences based on a documented diligent effort to identify families meeting the preference criteria. The standard for determining whether a placement is unavailable shall conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(3) The placement preferences shall be analyzed and considered each time there is a change in the child's placement.

(4) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another or solely on the basis of ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the Indian Child Welfare Act.

(4~~5~~)–(~~6~~7) * * *

(c) Active efforts

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful. These active efforts must include affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite the child with his or her family, must be tailored to the facts and circumstances of the case, and must be consistent with the requirements of section 224.1(f) of the Welfare and Institutions Code.

(1) The active efforts must be documented in detail in the record.

(~~1~~2) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(~~2~~3) Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

Rule 5.485~~5~~6. Termination of parental rights

(a) * * *

(b) When parental rights may not be terminated

The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child's best interest. Such a reason may include:

(1) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act of 1978 (25 U.S.C. § 1903(2));

(~~1~~2) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights; or

(~~2~~3) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.486~~6~~7. Petition to invalidate orders

(a)–(c) * * *

Rule 5.487~~7~~8. Adoption record keeping

(a)–(b) * * *

Rule 5.570. Request to change court order (petition for modification)

(a)–(d) * * *

(e) Grounds for grant of petition (§§ 388, 778)

(1)–(4) * * *

(5) For a petition filed under section 388(c)(1)(A), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable services have been offered or provided, and, by clear and convincing evidence, that the change of circumstance or new evidence described in the petition satisfies a condition in section 361.5(b) or (e). In the case of an Indian child, the court may terminate reunification services only if the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful. The court may grant the petition after following the procedures in (f), (g), and (h).

(6) For a petition filed under section 388(c)(1)(B), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable services have been offered or provided, and, by clear and convincing evidence, that action or inaction by the parent or guardian creates a substantial likelihood that reunification will not occur. Such action or inaction includes, but is not limited to, failure to visit the child or failure to participate regularly and make substantive progress in a court-ordered treatment program. In determining whether the parent or guardian has failed to visit the child or to participate regularly or make progress in a court-ordered treatment plan, the court must consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a residential substance abuse treatment program. In the case of an Indian child, the court may terminate reunification services only if the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful. The court may grant the petition after following the procedures in (f), (g), and (h).

(7) * * *

**(f)–(j) * * *

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

**(a)–(b) * * *

(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))

(1) The court must ask each participant present at the hearing whether:

(A) The participant knows or has reason to know that the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village;

(C) The child is or has ever been a ward of a tribal court; and

(D) Either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parent(s), Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) If it is known, or there is reason, to know that case involves an Indian child, the court shall proceed in accordance with rules 5.481 et seq.

**(~~c~~d) * * *

Rule 5.674. Conduct of hearing; admission, no contest, submission

**(a) * * *

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel.

All detention findings and orders must appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A)–(B) * * *

(C) Reasonable efforts have been made to prevent removal; ~~and~~

(D) The findings and orders required to be made on the record under section 319; and

(E) When it is known or there is reason to know the case involves an Indian child, that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected if maintained in the physical custody of his or her parent or parents or Indian custodian.

(c)–(e) * * *

Rule 5.676. Requirements for detention

(a) * * *

(b) Additional requirements for detention of an Indian child

If it is known, or there is reason to know the child is an Indian child, the child may not be ordered detained unless the court also finds that detention is necessary to prevent imminent physical damage or harm to the child, and the court states the facts supporting this finding on the record.

(~~b~~c) * * *

(d) Additional evidence required at a detention hearing for an Indian child

If it is known, or there is reason to know that the child is an Indian child, the reports relied upon must also include:

(1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child;

(2) The steps taken to provide notice to the child's parents, custodians, and tribe about the hearing pursuant to this section;

(3) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director;

(4) The residence and the domicile of the Indian child;

(5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native Village, the name of the tribe affiliated with that reservation or village;

(6) The tribal affiliation of the child and of the parents or Indian custodians;

(7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody;

(8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives

(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)

The court must order the child released from custody unless the court makes the findings specified in section 319(~~b~~c), and where it is known, or there is reason to know the child is an Indian child, the additional finding specified in section 319(d).

(b) * * *

(c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)

(1) * * *

(2) Where it is known or there is reason to know that the child is an Indian child, whether the child is released or detained at the hearing, the court must determine whether active efforts have been made to prevent or eliminate the need for removal, and that those active efforts are documented in detail in the record, and must make one of the following findings:

(A) Active efforts have been made; or

(B) Active efforts have not been made; and

(C) The court orders the department to initiate or continue services in accordance with Welfare and Institutions Code section 358.

(~~2~~3) The court must also determine whether services are available that would prevent the need for further detention.

(~~3~~4) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services, or where it is known or there is reason to know the child is an Indian child, active efforts that would prevent or eliminate the need to detain the child or that would permit the child to return home.

(~~4~~5) If the court orders the child detained, the court must proceed under section 319(~~d~~g)–(~~e~~h).

(d) Orders of the court (§ 319; 42 U.S.C. § 672)

If the court orders the child detained, the court must order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court and must make the other findings and orders specified in section 319(~~e~~g) and (~~f~~h)(3).

(e) Detention alternatives (§ 319)

The court may order the child detained as specified in section 319(~~f~~h).

(f) Additional requirements regarding detention of an Indian child (§ 319)

(1) If it is known, or there is reason to know the child is an Indian child, the child must be detained in a home that complies with the placement preferences in section 361.31 unless the court finds good cause exists not to follow the placement preferences.

(2) If it is known, or there is reason to know the child is an Indian child, the detention hearing may not be continued beyond 30 days unless the court finds all of the following:

(A) Restoring the child to the parent, parents, or Indian custodian would subject the child to imminent physical damage or harm;

(B) The court is unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(C) It is not possible to initiate an Indian child custody proceeding as defined in section 224.1.

(g) Hearing for return of custody of Indian child after emergency removal when emergency has ended

If it is known or there is reason to know the child is an Indian child, a party may request a hearing under rule 5.484(b) for return of the child prior to disposition if the party asserts that there is new evidence that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

Rule 5.690. General conduct of disposition hearing

(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner must comply with the following when preparing the social study:

(A) * * *

(B) If petitioner recommends removal of the child from the home, the social study must include:

(i) A discussion of the reasonable efforts made to prevent or eliminate removal, or if it is known or there is reason to know the child is an Indian child, the active efforts to provide remedial services and rehabilitative programs designed to prevent the

breakup of the Indian family, and a recommended plan for reuniting the child with the family, including a plan for visitation;

(ii)–(iii) * * *

(C) The social study must include a discussion of the social worker's efforts to comply with § 309(e) and rule 5.637, including but not limited to:

(i)–(ii) * * *

(iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; ~~and~~

(iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child; and

(v) If it is known or there is reason to know the child is an Indian child, efforts to locate extended family members as defined in section 224.1, and evidence that all individuals contacted have been provided with information about the option of obtaining approval for placement through the tribe's license or approval procedure.

(D)–(F) * * *

(2) * * *

**(b)–(c) * * *

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

(a)–(d) * * *

(e) Procedures—adoption

(1) * * *

(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. Once a final order of adoption has issued, t~~T~~he order may not be set aside or modified by the court, except as provided in section 366.26(e)(3)

and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

(f)–(h) * * *

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENTS AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship, page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*; and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*

ICWA-010(A), *Indian Child Inquiry Attachment* or page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment* or on page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment.* This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out ICWA-010(A), *Indian Child Inquiry Attachment* or
page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment*

1. Try to find contact information for the child's parents, or other legal guardian, the child's Indian custodian (if the child is living with an Indian person other than a parent), the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents or other legal guardian, and the child's Indian custodian, and other available family members and ask them (and the child, if he or she is old enough) these questions:
   a. Is the child a member of a tribe, and if they think he or she might be, then which tribe or tribes?
   b. Are they members of a tribe, and if they think they might be, which tribes?
   c. Does the child or the child's parents live in Indian country?
   d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
   e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out and attached to the petition form ICWA-010(A), *Indian Child Inquiry Attachment.* This does not apply to a petition for appointment of a guardian in a probate guardianship or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602.

After taking the steps listed above to find out whether the child is an Indian child, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction. You have reason to believe the child is an Indian child, if any of the people you ask these questions to answers yes to any of your questions.

Contacts with the tribe or tribes should include contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act published in the federal register by telephone, facsimile, or email and sharing with the tribe or tribes information identified by the tribe as necessary to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

ICWA-030, *Notice of Child Custody Proceeding for Indian Child*

Following your inquiry about the child's Indian status and contacts with the child's tribe(s) if necessary, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child* if you know or have reason to know the child is an Indian child.

Some tips to help you figure out if you have a reason to know the child is an Indian child

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
3. If the child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

If you know or have reason to know that the child is an Indian child, you must send the Notice to the following:

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tip on how to find the address for the child's tribe or tribes

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. § 23.12), a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can link to the Federal Register list, and other resources related to ICWA, on the Bureau of Indian Affairs website at https://www.bia.gov/bia/ois/dhs/icwa.

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior at 1849 C Street, N.W., Washington, D.C. 20240 and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do not know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. In order to help establish the child's tribal identity, provide as much information as possible, including the child's name, birthdate, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

How do you send the Notice and prove to the court that you have done so?

If you have an attorney, he or she will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the Notice, but you must deliver copies of the Notice and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then do step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
   a. Your petition;
   b. Form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship case, form GC-210(CA), *Guardianship Petition—Child Information Attachment;* and
   c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of ICWA-030, *Notice of Child Custody Proceeding for Indian Child.* Your proof must consist of the following:
   a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A) or form GC-210(CA));
   b. All return receipts given to you by the post office and returned from the mailing; and
   c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or counsel a party to do so. (Welf. & Inst. Code, § 224.2(e).)

ICWA-010(A)

CHILD'S NAME:	CASE NUMBER:

1. Name of child:

2. (Check one)

☐ I have not yet been able to complete inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry and will do it as soon as possible, and advise the court of my efforts.

☐ I have asked or ☐ I am advised by and on information and belief confirm that they have completed inquiry by asking the child, the child's parents, and other required and available individuals about the child's Indian status. The individuals asked include:

Person questioned:	Person questioned:
Name:	Name:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date questioned:	Date questioned:
Relationship to child:	Relationship to child:

☐ Additional persons questioned and their information is attached.

3. This inquiry *(check one):*

☐ gave me reason to believe the child is or may be an Indian child. *(if yes continue to 4).*

☐ gave me no reason to believe the child is or may be an Indian child.

4. ☐ I contacted the tribe(s) that the child may be affiliated with and worked with them to establish whether the child is a member or eligible for membership in the tribe(s). Information detailing the tribes contacted, the names of the individuals contacted, and the manner of the contacts is attached.

5. Based on inquiry and tribal contacts *(check all that apply):*

a. ☐ The child is or may be a member of or eligible for membership in a tribe.
   Name of tribe(s):
   Location of tribe(s):

b. ☐ The child's parents, grandparents, or great-grandparents are or were members of a tribe.
   Name of tribe(s):
   Location of tribe(s):

c. ☐ The residence or domicile of the child, child's parents, or Indian custodian is on a reservation or in an Alaska Native Village.

d. ☐ The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).

e. ☐ The child is or has been a ward of a tribal court.

f. ☐ Either parent or the child possess an Indian Identification card indicating membership or citizenship in an Indian tribe.
   Name of tribe(s):

6. If this is a delinquency proceeding under Welfare and Institutions Code, section 601 or 602:

☐ The child is in foster care.

☐ It is probable the child will be entering foster care.

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)

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-010(A) [Rev. January 1, 2020]

INDIAN CHILD INQUIRY ATTACHMENT

www.courts.ca.gov

ICWA-020

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
PARENTAL NOTIFICATION OF INDIAN STATUS	CASE NUMBER:

To the parent, Indian custodian, or guardian of the above–named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.

1. Name:

2. Relationship to child: ☐ Parent ☐ Indian custodian ☐ Guardian ☐ Other:

3. a. ☐ I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
   Name of tribe(s) *(name each):* _____
   Location of tribe(s): _____

   b. ☐ The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
   Name of tribe(s) *(name each):* _____
   Location of tribe(s): _____

   c. ☐ One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
   Name of tribe(s) *(name each):* _____
   Location of tribe(s): _____
   Name and relationship of ancestor(s): _____

   d. ☐ I am a resident of or am domiciled on a reservation or in an Alaska Native Village.

   e. ☐ The child is a resident of or is domiciled on a reservation or in an Alaska Native Village.

   f. ☐ The child is or has been a ward of a tribal court.

   g. ☐ Either parent or the child possess an Indian identification card indicating membership or citizenship in an Indian tribe.
   Name of tribe(s) *(name each):* _____

4. A previous form ICWA-020 ☐ has ☐ has not been filed with the court.

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)

Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-020 [Rev. January 1, 2020]

PARENTAL NOTIFICATION OF INDIAN STATUS

Welfare & Institutions Code, § 224.3;
Family Code, § 177(a);
Probate Code, § 1459.5(b);
Cal. Rules of Court, rule 5.481
www.courts.ca.gov

CONFIDENTIAL **ICWA-030**

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:	
NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD *(check all that apply):* ☐ **JUVENILE** ☐ **Dependency** ☐ **Delinquency** ☐ **ADOPTION** ☐ **CONSERVATORSHIP** ☐ **CUSTODY (Fam. Code, § 3041)** ☐ **DECLARATION OF FREEDOM FROM CONTROL OF PARENT** ☐ **GUARDIANSHIP** ☐ **TERMINATION OF PARENTAL RIGHTS** ☐ **VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT**	CASE NUMBER: HEARING DATE: DEPT.:

NOTICE TO *(check all that apply):*

☐ **Parents or Legal Guardians** ☐ **Tribes** ☐ **Indian Custodians** ☐ **Sacramento Area Director, BIA**
☐ **Secretary of the Interior**

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child *(a separate notice must be filed for each child):*

   Name Date of Birth Place of Birth

2. HEARING INFORMATION

   a. Date: Time: Dept.: Room
      Type of hearing:

   b. Address and telephone number of court ☐ same as noted above ☐ is *(specify):*

3. The child is or may be eligible for membership in the following Indian tribes *(list each):*

***Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.**

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-030 [Rev. January 1, 2020

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD
(Indian Child Welfare Act)

25 U.S.C. § 1901 et seq.;
Welfare & Institutions Code, §§ 224.2, 224.3;
Probate Code, §§ 1449, 1459.5; 1460.2;
Cal. Rules of Court, rules 5.480–5.487 and 7.1015
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. **Under the Indian Child Welfare Act (ICWA) and California law:**
   a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
   b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
   c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
   d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
   e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible termination of parental rights and adoption of the child.
   f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
   g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
   h. An Indian custodian is any Indian person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

5. **INFORMATION ON THE CHILD NAMED IN 1**
   a. A copy of the petition initiating this case is attached.
   b. The child's birth certificate is ☐ attached ☐ unavailable
   c. A copy of the tribal registration card of ☐ the child ☐ the parent is attached.
   d. Biological relative information is listed below. *(Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)*
   e. ☐ If the chart does not represent the gender identities of the individuals in the child's family tree, please attach an appropriate equivalent.

Biological Mother	Biological Father
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME:	CASE NUMBER:

5. f. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Mother (Child's Maternal Grandmother)	**Father's Biological Mother (Child's Paternal Grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Father (Child's Maternal Grandfather)	**Father's Biological Father (Child's Paternal Grandfather)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. g. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Grandmother (Child's Maternal Great-grandmother)	**Father's Biological Grandmother (Child's Paternal Great-grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Grandfather (Child's Maternal Great-grandfather)	**Father's Biological Grandfather (Child's Paternal Great-grandfather)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. h. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Father's Biological Grandmother (Child's Paternal Great-grandmother)	**Father's Biological Grandmother (Child's Paternal Great-grandmother)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Father's Biological Grandfather (Child's Paternal Great-grandfather)	**Father's Biological Grandfather (Child's Paternal Great-grandfather)**
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:

5. i. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A")

Information on Indian Ancestry of other Lineal Ancestors	Information on Indian Ancestry of other Lineal Ancestors
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

5. j. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	Indian Custodian Information
Name *(include maiden, married, and former names or aliases):*	Name *(include maiden, married, and former names or aliases):*
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:

CASE NAME:	CASE NUMBER:

6. **ADDITIONAL INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown.)

a. ☐ Biological birth father is named on birth certificate. ☐ Unknown
b. ☐ Biological birth father has acknowledged parentage. ☐ Unknown
c. ☐ There has been a judicial declaration of parentage. ☐ Unknown
d. ☐ Other alleged father *(name each):*

☐ Unknown

The following optional questions may be helpful in tracing the ancestry of the child in 1.

7. Has the child in 1 or any members of his or her family ever *(if "yes," provide the information requested below):*

a. Attended an Indian school? ☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?
☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given

c. Lived on federal trust land, a reservation or rancheria, or an allotment? ☐ Yes ☐ No ☐ Unknown

Name/relationship to child	Name/description of property and address	Dates of residence

d. Other relative information *(e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)*

Name/relationship to child	Current and former address	Birth date and place	Tribe, band, and location

8. ☐ Tribal affiliation and location of child in 1 *(check all that apply):*

a. ☐ 1906 Final Roll Name of relative listed on roll:
Relationship to child in 1:

b. ☐ Roll of 1924 Name of relative listed on roll:
Relationship to child in 1:

c. ☐ California Judgment Roll. Name of relative listed on roll:
Relationship to child in 1:

CASE NAME:	CASE NUMBER:

9. Additional party information *(list the name, mailing address, and telephone number of all parties notified):*

Name	Mailing Address	Telephone Number

DECLARATION

(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5–9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

CASE NAME:	CASE NUMBER:

CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS

(To be completed by social worker or probation officer.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receiptrequested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place):*

on*(date):*

Date: Title: Department:

(TYPE OR PRINT NAME) (SIGNATURE)

DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS

(To be completed by the attorney for Petitioner if Petitioner is represented.)

☐ I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter.

☐ I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place):*

on*(date):*

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

CERTIFICATE OF MAILING—PROBATE PROCEEDINGS

(To be completed by the clerk of the court if Petitioner is unrepresented.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice*under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with theUnited States Postal Service at *(place):* on*(date):*

Date: Title: Department:

(TYPE OR PRINT NAME) (SIGNATURE)

This form and all return receipts must be filed with the court.

CASE NAME:	CASE NUMBER:

NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS, TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED

1. ☐ Parent *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

2. ☐ Parent *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

3. ☐ Guardian *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

4. ☐ Guardian *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

5. ☐ Indian Custodian *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

6. ☐ Indian Custodian *(Name):*
Street address:
Mailing address:
City, state and zip code:
Telephone number:

7. ☐ *Sacramento Area Director*
Bureau of Indian Affairs
Street address: 2800 Cottage Way
City, state and zip code: Sacramento, CA 95825
Telephone number:

8. ☐ *Sacramento Area Director*
Bureau of Indian Affairs
Street address: 1849 C Street, N.W.
City, state and zip code: Washington D.C. 20240
Telephone number:

9. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:

10. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:

11. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:

12. ☐ Tribe *(Name):*
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:

Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.

☐ Additional tribes served listed on attached form ICWA-030(A)

ICWA-040

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
NOTICE OF DESIGNATION OF TRIBAL REPRESENTATIVE IN A COURT PROCEEDING INVOLVING AN INDIAN CHILD		CASE NUMBER:
		RELATED CASES *(if any)*:

DRAFT
Not approved by the Judicial Council

TO ALL PARTIES:

1. I represent the *(name of tribe):* , which is a federally recognized Indian tribe listed in the Federal Register.

2. The above named child or children are:
   - ☐ Members of this tribe
   - ☐ Eligible for membership in this tribe and their ☐ Mother ☐ Father is a member of this tribe.

3. Under the Indian Child Welfare Act, the tribe designates *(specify name and title):* as the tribe's representative and authorizes that person under the attached ☐ tribal resolution ☐ other official tribal document (e.g., letter, declaration, or other document from the office of the chairperson or president of the tribe or ICWA office) for the following purposes:
   - a. ☐ to receive notice of hearings;
   - b. ☐ to be present at hearings;
   - c. ☐ to address the court;
   - d. ☐ to examine all court documents relating to the case *(at the court's discretion, if tribe does not intervene);*
   - e. ☐ to submit written reports and recommendations to the court;
   - f. ☐ to request transfer of the case to the tribe's jurisdiction; and
   - g. ☐ to intervene at any point in a proceeding when it is determined the act applies.

4. The tribe requests that notice of all proceedings be sent to the above named tribal representative at the contact information below:

   Name:

   Title:

   Address:

   City, state, zip code:

   Telephone: Fax:

CHILD'S NAME:	CASE NUMBER:

5. The tribe ☐ requests ☐ does not request an additional notice be sent to the tribal council at the contact information below:

Name:

Title:

Address:

City, state, zip code:

Telephone: Fax:

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

CHILD'S NAME:	CASE NUMBER:

PROOF OF SERVICE

ICWA-040, the *Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child* must be served on the other parties or attorneys for the parties. Anyone at least 18 years of age EXCEPT A PARTY in this action may personally serve or mail the notice. The person who serves the notice must fill out and sign this proof of service. ICWA-040, the *Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child* may not be filed with the court until all the parties or attorneys are served.

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served a copy of form ICWA-040 and all attachments as follows *(check either a or b below for each person served):*
   a. ☐ **Personal service.** I personally delivered a copy of form ICWA-040 and all attachments as follows:
      (1) ☐ Name of child's attorney *(if applicable)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (2) Name of ☐ parent *(if self-represented)* or ☐ parent's attorney *(if applicable)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (3) Name of Court Appointed Special Advocate *(if applicable)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (4) Name of ☐ social worker *(dependency only)* or ☐ probation officer *(delinquency only)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (5) Name of ☐ child's caregiver or ☐ Indian custodian served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (6) Attorney for child welfare services agency *(dependency only)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (7) Name of ☐ parent *(if self-represented)* or ☐ parent's attorney *(if applicable)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:
      (8) District attorney *(delinquency only)* served:
         (a) Address:
         (b) Date of delivery:
         (c) Time of delivery:

CHILD'S NAME:	CASE NUMBER:

2. b. ☐ **Mail.** I deposited a copy of form ICWA-040 and all attachments in the United States mail, in a sealed envelope with postage fully prepaid, addressed as follows:

(1) ☐ Name of child's attorney *(if applicable)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(2) Name of ☐ parent *(if self-represented)* or ☐ parent's attorney *(if applicable)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(3) Name of Court Appointed Special Advocate *(if applicable)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(4) Name of ☐ social worker *(dependency only)* or ☐ probation officer *(delinquency only)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(5) Name of ☐ child's caregiver or ☐ Indian custodian served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(6) Attorney for child welfare services agency *(dependency only)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(7) Name of ☐ parent *(if self-represented)* or ☐ parent's attorney *(if applicable)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(8) District Attorney *(delinquency only)* served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

c. ☐ **Attachment.** If there are additional persons to serve, attach a separate piece of paper to form ICWA-040, write the child's name and case number on the top, and list additional persons' names, mailing addresses or location of personal service, dates of delivery or deposit, times of delivery or deposit, and whether service was made personally or by mail.

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

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PERSON WHO SERVED NOTICE)

ICWA-060

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	RELATED CASES *(if any)*:

1. Child's name: Date of birth:
2. a. Date of hearing: Time: Dept.: Room:
   b. Persons present:
   - ☐ Child
   - ☐ Child's attorney
   - ☐ Probation officer/social worker
   - ☐ Deputy county counsel
   - ☐ Tribal representative *(name)*:
   - ☐ Parent *(name):*
   - ☐ Parent *(name):*
   - ☐ Guardian
   - ☐ Deputy district attorney
   - ☐ Parent's attorney
   - ☐ Parent's attorney
   - ☐ CASA
   - ☐ Other:
3. The court has read and considered the
   - ☐ ICWA-50, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
   - ☐ Other *relevant evidence (specify):*
4. ☐ The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.
5. **THE COURT FINDS AND ORDERS** under ☐ Family Code, § 177(a); ☐ Probate Code, § 1459.5(b); ☐ Welfare and Institutions Code, § 305.5; ☐ 25 U.S.C. § 1911(a) (Exclusive Jurisdiction)
   a. ☐ The request for transfer is granted and the following ordered:
      (1) The child's case is ordered transferred to the jurisdiction of the tribe listed below:
      Name of tribe:
      Address:
      City, state, zip code:
      Telephone number:
      (2) Physical custody of the child is transferred to a designated representative of the tribal court listed below:
      Name:
      Title:
      Address:
      City, state, zip code:
      Telephone number:
   b. ☐
      (1) The case is being transferred from a juvenile court, and all of the findings and orders or modifications of orders that have been made in the case are attached.
      (2) The case is being transferred from a juvenile court, and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.
      (3) The case is being transferred from a juvenile court, and all originals contained in the court file must be transferred to the tribal court; a copy of the transfer order and findings of fact must be maintained by the transferring court.

CHILD'S NAME:	CASE NUMBER:

5. (4) A party that intends to seek appellate review of the transfer order is advised that the party must take an appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delay the effective date) of the transfer order will result in loss of appellate jurisdiction.

c. ☐ The petition to transfer is denied because one of the following circumstances exist:

(1) ☐ One or both of the child's parents opposes the transfer.
Name of opposing parent:

(2) ☐ The tribal court or other administrative body of the child's tribe declines the transfer.

d. ☐ The petition to transfer is denied because good cause exists not to transfer the case.

(1) ☐ Name of opposing party: has submitted information or evidence in writing to the court and all parties.

(2) ☐ Petitioner has had the opportunity to provide information or evidence in rebuttal.

(3) ☐ As detailed on the record, the party opposing the transfer has established that good cause not to transfer the proceeding exits.

(4) ☐ The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.

6. ☐ Proof that tribe has accepted transfer is attached and jurisdiction is terminated.

7. ☐ Hearing is set for *(date):* *(time):* *(dept.):*
to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date:

JUDICIAL OFFICER

ICWA-070

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:	
CHILD'S NAME:	
REQUEST FOR EX PARTE HEARING TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD	CASE NUMBER:

1. Child's name: Date of birth:

2. Your information:
   a. I am the:
      ☐ child or youth ☐ mother ☐ father ☐ legal guardian
      ☐ Indian custodian ☐ tribal representative or attorney ☐ other party
   b. My name:
   c. My address:
      City: State: Zip code:
   d. My telephone number:
   e. *If you are an attorney:*
      My client's name:
      My client's relationship to the child or youth:

3. The child is or there is reason to know the child is an Indian child.

4. At a hearing on , the court found that detention or removal of the child from the custody of his/her parent, Indian custodian, or legal guardian was necessary to prevent imminent physical damage or harm to the child justifying an emergency removal and placement of the child.

5. There is new information showing a change in circumstances since that emergency removal, and that the child's placement is no longer necessary to prevent imminent physical damage or harm to the child. The new information showing this is:

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

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-070 [New January 1, 2020]

REQUEST FOR EX PARTE HEARING TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD

25 C.F.R. § 23.113(b)(2);
Welfare & Institutions Code, § 319.4;
www.courts.ca.gov

ICWA-080

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:	
CHILD'S NAME:	
ORDER ON REQUEST FOR EX PARTE HEARING TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD	CASE NUMBER:

1. Child's name: Date of birth:

2. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith, the court Finds and Orders:
   a. ☐ The request for an ex parte hearing is denied as the evidence submitted to the court does not show new information establishing that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child.
   b. ☐ The request for an ex parte hearing is granted and is scheduled for _____ .

Date:

▶ _____
JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-080 [New January 1, 2020]

25 C.F.R. § 23.113(b)(2);
Welfare & Institutions Code, § 319.4;
www.courts.ca.gov

ICWA-090

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:	
CHILD'S NAME:	
ORDER ON EX PARTE REQUEST TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD	CASE NUMBER:

1. Child's name: Date of birth:

2. a. Date of hearing: Time: Dept.: Room:
   b. Persons present:
   - ☐ Child
   - ☐ Child's attorney
   - ☐ Probation officer/social worker
   - ☐ CASA
   - ☐ Tribal representative:
   - ☐ Parent (name):
   - ☐ Parent (name):
   - ☐ Guardian
   - ☐ County counsel
   - ☐ other:
   - ☐ Parents' attorney
   - ☐ Parents' attorney
   - ☐ Indian custodian
   - ☐ District attorney

3. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith and the evidence and submissions at the hearing, the court Finds and Orders:
   a. ☐ The child's emergency removal or detention and placement continues to be necessary to prevent imminent physical damage or harm to the child.
   b. ☐ New information establishes that the child's emergency removal or detention and placement is no longer necessary to prevent imminent physical damage or harm to the child, and the child is ordered returned to the physical custody of:

.

Date:

▶ _____
JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-090 [New January 1, 2020]

ORDER ON EX PARTE HEARING TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD

25 C.F.R. § 23.113(b)(2);
Welfare & Institutions Code, § 319.4;
www.courts.ca.gov

For counties filing a separate dependency petition for each child or for counties using *Additional Children Attachment* (form JV-101(A)) **JV-100**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE DEPENDENCY PETITION (VERSION ONE) **(Welf. & Inst. Code, § 300 et seq.)** ☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**	CASE NUMBER: RELATED CASE *(if any):*

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 1a for concise statements of facts):*
☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Gender:

f. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*
☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

2. Indian Child Welfare Act Inquiry

a. ☐ I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

2. b. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

3. Petitioner requests that the court find these allegations to be true.

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

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____ ☐ Other children are listed on *Additional Children Attachment* (form JV-101(A))

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

For counties filing a joint dependency petition for children with the same mother and father **JV-110**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE DEPENDENCY PETITION (VERSION TWO) **(Welf. & Inst. Code, § 300 et seq.)** ☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**	CASE NUMBER: RELATED CASE *(if any):*

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable subdivisions for each child; see attachment 1a for concise statements of facts)*:

b.

Child's name	Age	Date of birth	Gender	Section 300 subdivisions *(check all that apply):*
1.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
2.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
3.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
4.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j
5.				☐a ☐b(1) ☐b(2) ☐c ☐d ☐e ☐f ☐g ☐h ☐i ☐j

c. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown

If mother or father *(check all that apply)*:
☐ legal ☐ biological ☐ presumed ☐ alleged

d. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown

If mother or father *(check all that apply)*:
☐ legal ☐ biological ☐ presumed ☐ alleged

e. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown

If mother or father *(check all that apply)*:
☐ legal ☐ biological ☐ presumed ☐ alleged

f. Other *(state name, address, and relationship to child):*

☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

g. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

h. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*

☐ Relative ☐ Shelter/foster care ☐ Other

(See important notice on page 2.)

Form Adopted for Alternative Mandatory Use
Instead of Form JV-100
Judicial Council of California
JV-110 [Rev. January 1, 2020]

Welfare and Institutions Code, § 300 et seq.;
Cal. Rules of Court, rule 5.504
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

2. Indian Child Welfare Act Inquiry

a. ☐ I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).

b. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

3. Petitioner requests that the court find these allegations to be true.

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

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

JV-320

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:	
CHILD'S NAME:	
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31	CASE NUMBER:

Child's name:
Date of birth: Age:
Parent's name *(if known):* ☐ Mother ☐ Father
Parent's name *(if known):* ☐ Mother ☐ Father

1. a. Hearing date: Time: Dept.: Room:
   b. Judicial officer:
   c. Parties and attorneys present:

2. ☐ The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), 366.25(b), or 727.31(b) and the report and recommendation of the
   ☐ social worker ☐ probation officer ☐ and other evidence.
3. ☐ The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. ☐ Notice has been given as required by law.
   b. ☐ This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
6. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. ☐ The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
   ☐ parent *(name):* ☐ Mother ☐ Father
   ☐ parent *(name):* ☐ Mother ☐ Father

Form Adopted for Mandatory Use
Judicial Council of California
JV-320 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 361.7, 366.24, 366.26, 727.3, 727.31, 727.4, 16501.1;
Cal. Rules of Court, rules 5.485, 5.504, 5.590, 5.725, 5.810, 5.820
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. a. ☐ There is clear and convincing evidence that it is likely the child will be adopted.
   b. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
      (1) ☐ Qualified expert witness testimony was provided by _____ (Name of Witness); and
      (2) ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
      (3) ☐ The court finds by evidence beyond a reasonable doubt that continued physical custody by the ☐ mother ☐ father ☐ Indian Custodian ☐ other: _____ is likely to cause serious emotional or physical damage to the child.

9. The parental rights of
   a. ☐ parent *(name):* _____ ☐ Mother ☐ Father
   b. ☐ parent *(name):* _____ ☐ Mother ☐ Father
   c. ☐ alleged fathers *(names):*
   d. ☐ unknown mother ☐ all unknown fathers

   are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.

   e. **The adoption is likely to be finalized by *(date):***

   (If item 9 is checked, go to item 17.)

10. This case involves an Indian child. The parental rights of
    a. ☐ parent *(name):*
    b. ☐ parent *(name):*
    c. ☐ Indian custodians *(names):*
    d. ☐ alleged fathers *(names):*
    e. ☐ unknown mother ☐ all unknown fathers

    are modified in accordance with the tribal customary adoption order of the *(specify):* _____ tribe, dated _____ and comprising _____ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.

    (If item 10 is checked, go to item 17.)

11. ☐ The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12. ☐ Termination of parental rights would be detrimental to the child for the following reasons: *(If item 12 is checked, check reasons below and go to item 15 or 16.)*
    a. ☐ The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
    b. ☐ The child is 12 years of age or older and objects to termination of parental rights.
    c. ☐ The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
    d. ☐ The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
       (1) under the age of 6; or
       (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:

12. e. ☐ There would be substantial interference with the child's sibling relationship.

f. ☐ The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(2) The child's tribe has identified guardianship or another permanent plan for the child.

13. ☐ Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14):*

a. ☐ is a member of a sibling group that should stay together.

b. ☐ has a diagnosed medical, physical, or mental disability.

c. ☐ is 7 years of age or older.

14. a. ☐ Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order):*

(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)

b. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father

☐ parent *(name):* ☐ Mother ☐ Father

☐ legal guardian *(name):*

☐ other *(name):*

is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*

is detrimental to the child's physical or emotional well-being and is terminated.

15. ☐ The child's permanent plan is legal guardianship.

☐ *(Name):*

is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*

a. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father

☐ parent *(name):* ☐ Mother ☐ Father

☐ legal guardian *(name):*

☐ other *(name):*

is scheduled as follows *(specify):*

b. ☐ Visitation between the child and *(names):*

is detrimental to the child's physical or emotional well-being and is terminated.

c. ☐ Dependency ☐ Wardship is terminated.

d. ☐ Dependency ☐ Wardship is terminated. The likely date for termination of the dependency or wardship is *(date):* *(If this item is checked, go to item 17.)*

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

CHILD'S NAME:	CASE NUMBER:

16. a. ☐ The child remains placed with *(name of placement):*
with a permanent plan of *(specify):*

(1) ☐ Returning home
(2) ☐ Adoption
(3) ☐ Tribal customary adoption
(4) ☐ Legal guardianship
(5) ☐ Permanent placement with a fit and willing relative
(6) ☐ Independent living with identification of a caring adult to serve as a lifelong connection

The child's permanent plan is likely to be achieved by *(date):*

(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)

b. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father
☐ parent *(name):* ☐ Mother ☐ Father
☐ legal guardian *(name):*
☐ other *(name):*

is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

17. ☐ The child is an Indian child. The court finds that the child's permanent plan complies with the placement preferences because:

a. ☐ The permanent plan is something other than adoption, and *(choose one):*

(1) ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1 (c); or
(2) ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
(3) ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
(4) ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
(5) ☐ The child is placed in accordance with the preferences established by the tribe; or
(6) ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

b. ☐ The permanent plan is adoption *(choose one):*

(1) ☐ The child is placed with a member of the child's extended family; or
(2) ☐ An exhaustive search was made for a placement with a member of the child's extended family, those efforts are documented in detail in the record, and the child is placed with other members of the child's tribe; or
(3) ☐ An exhaustive search was made for a placement with a member of the child's extended family or other member of the child's tribe, those efforts are documented in detail in the record, and the child is placed with another Indian family; or
(4) ☐ The child is placed in accordance with the preferences established by the tribe; or
(5) ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in detail in the record.

CHILD'S NAME:	CASE NUMBER:

18. ☐ The child's placement is appropriate.

19. ☐ The child is an Indian child and the court finds that the agency has provided affirmative, active, thorough, and timely efforts to prevent the breakup of the Indian family and make it possible for the child to be returned home, and these efforts have proved unsuccessful. These efforts are documented in detail in the record.

20. ☐ The child is, or there is reason to know the child is, an Indian and notice has been provided as required by section 224.3 of Welfare and Institutions Code and proof of such notice has been filed with the court.

21. ☐ The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years of age or older.)*

22. ☐ The child remains a ☐ dependent ☐ ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*

23. ☐ All prior orders not in conflict with this order will remain in full force and effect.

24. ☐ Other *(specify):*

25. ☐ Next hearing date: Time: Dept: Room:
   a. ☐ Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
   b. ☐ Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
   c. ☐ Six-month postpermanency review

26. The ☐ Parent *(name):* ☐ Mother ☐ Father
   ☐ Parent *(name):* ☐ Mother ☐ Father
   ☐ Indian custodian *(name):*
   ☐ Child
   ☐ Other *(name):*
   have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____ _____
JUDICIAL OFFICER

JV-405

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:	
CHILD'S NAME:	
CONTINUANCE—DEPENDENCY DETENTION HEARING	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Dispositional hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

THE COURT FINDS AND ORDERS:

3. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

4. ☐ a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
      (1) the child understands the nature of the proceedings;
      (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
      (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
   b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

CHILD'S NAME:	CASE NUMBER:

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following:

a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. The right to be informed by the court of the following:
- the contents of the petition;
- the nature of and possible consequences of juvenile court proceedings;
- the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
- that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
- that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

7. The court has considered the information contained in
a. ☐ the report of social worker dated:
b. ☐ other *(specify):*
c. ☐ other *(specify):*

and based on this information finds that continuance in the home is contrary to the child's welfare pending a further determination at the continued hearing.

8. ☐ The court grants the motion for continuance under Welfare and Institutions Code section 322 made by the

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

9. ☐ A motion for continuance was made by the

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

and good cause exists for granting the continuance in that

a. ☐ notice of the date, time, and location of the hearing was not given to *(name):*
b. ☐ the child did not receive proper notice of his or her right to attend the hearing.
c. ☐ other *(specify):*

The motion for the continuance is granted.

CHILD'S NAME:	CASE NUMBER:

10. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms):*
    a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
    b. ☐ *Visitation Attachment: Sibling* (form JV-401).
    c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

11. **Parentage**
    a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
    b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
       (1) alleged parent *(name):*
       (2) alleged parent *(name):*
       (3) alleged parent *(name):*

12. **ICWA Inquiry**
    On the record, the court has:
    a. ☐ Asked each participant present at the hearing:
       - Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
       - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village and if yes, the name of the tribe or village;
       - Whether the child is or was ever a ward of a tribal court, and if yes the name of the tribe or village; and
       - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.
    b. ☐ Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native Village.
    c. (1) ☐ The court finds that there is no reason to believe or know that the child is an Indian child. ICWA does not apply; or
       (2) ☐ The court finds that there is reason to believe that the child is an Indian child; and
          (a) The record includes evidence that the agency has complied with Welf. & Inst. Code, § 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or
          (b) The agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services and/or others.
       (3) ☐ The court finds that there is reason to know that the child is an Indian child, and
          (a) The agency has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;
          (b) Notice has been provided as required by law; and
          (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
       (4) ☐ The court finds that the child is an Indian child and a member of the tribe.

13. The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

14. The ☐ mother ☐ biological father ☐ legal guardian
    ☐ presumed father ☐ alleged father ☐ Indian custodian
    ☐ other *(specify):*
    must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

CHILD'S NAME:	CASE NUMBER:

15. The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*
were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete form ICWA-020 and to submit it to the court before leaving the courthouse today.

16. ☐ There is reason to know the child is an Indian child, and the county agency must provide notice under § 224.3 of the Welf. and Inst. Code for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

17. The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*
must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

18. ☐ **Other findings and orders:**
a. ☐ See attached.
b. ☐ *(Specify):*

19. **All parties are ordered to return for the continued hearing:**

Hearing date:	Time:	Dept:	Room:

20. **All prior orders not in conflict with this order remain in full force and effect.**

21 Number of pages attached: _____

Date: _____ _____
☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: _____ _____
☐ COMMISSIONER ☐ REFEREE

JV-410

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:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER DETENTION HEARING **(Welf. & Inst. Code, § 319)**	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Dispositional hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-410 [Rev. January 1, 2020]

Welfare and Institutions Code, § 319
Cal. Rules of Court, rule 5.678
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

6. ☐ a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
   (1) the child understands the nature of the proceedings;
   (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
   (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
   b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

7. ☐ A Court Appointed Special Advocate is appointed for the child.

8. **Parentage**
   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

9. **ICWA Inquiry**
   On the record, the court has:
   a. ☐ Asked each participant present at the hearing:
   - Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
   - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village and if yes, the name of the tribe or village;
   - Whether the child is or was ever a ward of a tribal court, and if yes the name of the tribe or village; and
   - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.

   b. ☐ Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native Village.

10. **ICWA Status**
   a. ☐ The court finds that there is no reason to believe or know that the child is an Indian child and ICWA does not apply; or
   b. ☐ The court finds that there is reason to believe that the child may be an Indian child; and
   (1) ☐ The agency has completed further inquiry as required by Welfare and Institutions Code section 224.2(e) and used due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status, and there is no reason to know that the child is an Indian child. ICWA does not apply; or
   (2) ☐ The agency is ordered to complete further inquiry as required by Welfare and Institutions Code section 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services and/or others.
   c. ☐ The court finds that there is reason to know that the child is an Indian child, and
   (1) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;
   (2) Notice has been provided as required by law; and
   (3) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

CHILD'S NAME:	CASE NUMBER:

10. d. ☐ The court finds that the child is an Indian child and a member of the tribe.

11. **ICWA Jurisdiction**

a. It is known or there is reason to know that the child is an Indian child. The court finds *(select one):*

(1) ☐ That it has jurisdiction over the proceeding because:

(a) The court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and

(b) The court finds that the child is not already under the jurisdiction of a tribal court; or

(2) ☐ The court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or

(3) ☐ The court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with 25 U.S.C. § 1911.

Advisements and waivers

12. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following:

a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. The right to be informed by the court of the following:

- the contents of the petition;
- the nature of and possible consequences of juvenile court proceedings;
- the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
- that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
- that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

13. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

CHILD'S NAME:	CASE NUMBER:

14. ☐ **CHILD NOT DETAINED**

a. ☐ Services that would prevent the need for further detention, including those set forth in item 17, are available.

b. ☐ The child is returned to the custody of

☐ mother ☐ biological father ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ alleged father ☐ Indian custodian

15. ☐ **CHILD DETAINED**

a. Services that would prevent the need for further detention are not available.

b. A prima facie showing has been made that the child comes within Welf. & Inst. Code, § 300.

c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND *(select at least one):*

(1) ☐ there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.

(2) ☐ there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) ☐ the child has left a placement in which he or she was placed by the juvenile court.

(4) ☐ the child has been physically abused by a person residing in the home and is unwilling to return home.

(5) ☐ the child has been sexually abused by a person residing in the home and is unwilling to return home.

d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welf. & Inst. Code, § 355 or further order of the court.

e. The initial removal of the child from the home was necessary for the reasons stated on the record.

f. The facts on which the court bases its decision to order the child detained are stated on the record.

g. The child is placed in

(1) ☐ the approved home of a relative.

(2) ☐ an emergency shelter.

(3) ☐ other suitable licensed place.

(4) ☐ a place exempt from licensure designated by the juvenile court.

(5) ☐ the approved home of a nonrelative extended family member as defined in Welf. & Inst. Code, § 362.7.

(6) ☐ the home of an extended family member as defined in Welf. & Inst. Code § 224.1, and there is reason to know the child is an Indian child.

(7) ☐ a home licensed or approved by the Indian child's tribe.

h. Services, including those set forth in item 13, are to be provided to the family as soon as possible to reunify the child with his or her family.

i. ☐ Reasonable efforts were made to prevent or eliminate the need for removal from the home.

j. ☐ Reasonable efforts were not made to prevent or eliminate the need for removal from the home.

k. ☐ There is a relative who is able, approved, and willing to care for the child.

l. ☐ A relative who is able, approved, and willing to care for the child is not available. *This is a temporary finding and does not preclude later placement with a relative under Welf. & Inst. Code, § 361.3.*

CHILD'S NAME:	CASE NUMBER:

16. ☐ **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

a. ☐ The evidence includes all of the requirements of section 319 (b).

b. ☐ The agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; or

☐ The agency has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and

The agency is ordered to initiate or continue active efforts.

c. ☐ For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

d. ☐ The child's placement complies with the placement preferences set forth in Welf. & Inst. Code, § 361.31. The child is placed:

☐ With a member of the child's extended family;

☐ With a foster home licensed, approved, or specified by the child's tribe;

☐ With an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

☐ In an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

OR

☐ For the reasons stated on the record, the court finds that there is good cause not to follow the placement preferences.

17. ☐ The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other *(specify):*
a. ☐ Alcohol and drug testing	☐	☐	☐	☐	☐	☐
b. ☐ Substance abuse treatment	☐	☐	☐	☐	☐	☐
c. ☐ Parenting education	☐	☐	☐	☐	☐	☐
d. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
e. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
f. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐

18. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms):*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b. ☐ *Visitation Attachment: Sibling* (form JV-401).

c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

19. ☐ The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20. ☐ The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

21. ☐ There is reason to know the child is an Indian child and the county agency must provide notice under § 224.3 of the Welf. and Inst. Code for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

CHILD'S NAME:	CASE NUMBER:

22. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

23. ☐ The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

24. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

   a. ☐ Jurisdictional hearing
   b. ☐ Dispositional hearing
   c. ☐ Settlement conference
   d. ☐ Mediation
   e. ☐ Other *(specify):*

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. Number of pages attached: _____

Date: _____ _____

☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: _____ _____

☐ COMMISSIONER ☐ REFEREE

JV-412

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER JURISDICTIONAL HEARING **(Welf. & Inst. Code, § 356)**	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Jurisdictional hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

   h. Party *(name):*

	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-412 [Rev. January 1, 2020]

FINDINGS AND ORDERS AFTER JURISDICTION HEARING
(Welf. & Inst. Code, § 356)

Welfare and Institutions Code, §§ 353, 355, 356
Cal. Rules of Court, rules 5.682, 5.684
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. ☐ The child is an Indian child or ☐ there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

6. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

7. ☐ a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
   (1) the child understands the nature of the proceedings;
   (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
   (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
   b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

8. ☐ A Court Appointed Special Advocate is appointed for the child.

9. The child's county of residence is:

10. The child's date of birth is *(specify):*

11. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

Advisements and waivers

12. a. ☐ The petition was read to those present at the beginning of this jurisdictional hearing.
   b. ☐ Reading of the petition was waived by all those present at the beginning of this jurisdictional hearing.

13. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following:

a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. The right to be informed by the court of the following:
- the contents of the petition;
- the nature of and possible consequences of juvenile court proceedings;
- the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
- that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;

CHILD'S NAME:	CASE NUMBER:

13. b.
- that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

14. ☐ On the motion of the petitioner, the following allegations are stricken:

15. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

16. ☐ The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

understands the nature of the conduct alleged in the petition and the possible consequences of his or her admission, plea of no contest, or submission.

17. ☐

Party	Admits	Submits	Pleads no contest	To petition as amended on *(specify date):*
a. ☐ Mother	☐	☐	☐	
b. ☐ Presumed father	☐	☐	☐	
c. ☐ Biological father	☐	☐	☐	
d. ☐ Alleged father	☐	☐	☐	
e. ☐ Legal guardian	☐	☐	☐	
f. ☐ Indian custodian	☐	☐	☐	
g. ☐ *(Specify):*	☐	☐	☐	

18. ☐ There is a factual basis for the admission.

19. ☐ By a preponderance of the evidence, the allegations stated below are true:

a. ☐ as stated in the petition as originally filed.
b. ☐ as stated in the petition as amended on *(date):*
(1) ☐ by agreement of the parties.
(2) ☐ by the court to conform to proof.

FINDINGS AND ORDERS AFTER JURISDICTION HEARING
(Welf. & Inst. Code, § 356)

CHILD'S NAME:	CASE NUMBER:

20. ☐ The allegations *(specify):*

as stated in the petition ☐ as amended on *(date):* are not proven and are ordered stricken.

21. ☐ The allegations of the petition are not sustained.

22. ☐ The petition is sustained under, and the child is a person described by, Welf. & Inst. Code, § 300 *(check all that apply):*

☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)

23. ☐ The previous disposition has not been effective in the protection of the child.

24. ☐ The county agency is ordered to immediately return the child to the

☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

25. ☐ The child and the

☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

are placed under the supervision of the county agency for a minimum of six months under their voluntary agreement to informal supervision and the provision of services designed to keep the family together as stated in the family's case plan.

26. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms):*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ *Visitation Attachment: Sibling* (form JV-401).
c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

27. **All prior orders not in conflict with this order remain in full force and effect.**

28. ☐ **Other findings and orders:**

a. ☐ See attached.
b. ☐ *(Specify):*

29. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ Dispositional hearing
b. ☐ Settlement conference
c. ☐ Mediation
d. ☐ Other *(specify):*

30. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

31. Number of pages attached: _____

Date: _____ _____

JUDICIAL OFFICER

JV-415

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:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING **(Welf. & Inst. Code, § 361 et seq.)**	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Dispositional hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

   h.

Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
      (1) ☐ For the purposes of establishing a guardianship, the report of the social worker includes an assessment as specified in Welf. & Inst. Code, §§ 360(a), 361.5(g).
      (2) ☐ In the case of an Indian child, the report of the social worker includes:
         (a) Evidence that the agency has provided affirmative, active, thorough, and timely efforts to prevent the breakup of the Indian family and make it possible for the child to be returned home, and these efforts have proved unsuccessful;
         (b) An assessment in consultation with the Indian child's tribe, as specified in Welf. & Inst. Code, §358.1(j), whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

Form Approved for Optional Use
Judicial Council of California
JV-415 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, § 361 et seq.;
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

3. b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*
   f. ☐ Testimony of qualified expert under the Indian Child Welfare Act

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

5. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

6. ☐ A Court Appointed Special Advocate is appointed for the child.

7. **Parentage**
   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
      (1) alleged parent *(name):*
      (2) alleged parent *(name):*
      (3) alleged parent *(name):*

8. **ICWA Inquiry**
   a. ☐ The court finds that the social worker/probation officer has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, , whether there is information indicating the child is an Indian child.
   b. ☐ The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all participants in the proceedings, and the following relatives, , whether there is information indicating the child is an Indian child.
   c. ☐ The parties were instructed to inform the court if they receive any information indicating that the child is an Indian child.
   d. (1) ☐ The court finds that there is no reason to know that the child is an Indian child. Unless new information is received indicating that the child is an Indian child, ICWA does not apply. OR
      (2) ☐ The court finds that there is reason to know that the child is an Indian child; and
         (a) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;
         (b) Notice has been provided as required by law; and
         (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
      (3) ☐ The court finds that the child is an Indian child and a member of the tribe.

CHILD'S NAME:	CASE NUMBER:

Advisements and waivers

9. **The court informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

10. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

has knowingly and intelligently waived the right to court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

11. ☐ **Sibling group**

The child and the child's siblings listed below form a sibling group in which at least one child in the sibling group was under the age of three years at the time of the initial removal and all children in the sibling group were removed from parental custody at the same time.

Sibling *(name):*

a.
b.
c.
d.
e.
f.

12. **Disposition is ordered as stated in** *(check appropriate box and attach indicated form):*

a. ☐ *Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision (Welf. & Inst. Code, § 360(b))* (form JV-416), which is attached and incorporated by reference.

b. ☐ *Dispositional Attachment: In-Home Placement With Formal Supervision (Welf. & Inst. Code, § 361)* (form JV-417), which is attached and incorporated by reference.

c. ☐ *Dispositional Attachment: Appointment of Guardian (Welf. & Inst. Code, § 360(a))* (form JV-418), which is attached and incorporated by reference.

d. ☐ *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-420), which is attached and incorporated by reference.

e. ☐ *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-421), which is attached and incorporated by reference.

13. **The child's rights** under Welf. & Inst. Code, § 388 and the procedure for bringing a petition under Welf. & Inst. Code, § 388, including the availability of appropriate and necessary forms, was provided to the child as follows:

a. ☐ Child under the age of 12 years, through the child's attorney of record or guardian ad litem

b. ☐ Child 12 years of age or older who was present at the hearing, on the record and in writing by handing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)

c. ☐ Child 12 years of age or older who was present at the hearing, in writing by mailing the child a copy of *Child's Information Sheet—Request to Change Court Order (form JV-185)*

CHILD'S NAME:	CASE NUMBER:

14. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

15. The child's medical, dental, mental health, and educational information required by Welfare and Institutions Code section 16010 was provided by the ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

16 **All prior orders not in conflict with this order remain in full force and effect.**

17. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

18. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

   a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
   b. ☐ Six-month permanency hearing (Welf. & Inst. Code, § 366.21(e))
   c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
   (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

   d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
   e. ☐ Other *(specify):*

19. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

20. Number of pages attached: _____

Date: _____ _____
☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: _____ _____
☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

JV-418

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHEMENT: APPOINTMENT OF GUARDIAN
(Welf. & Inst. Code, § 360(a))

1. ☐ The child is a person described under Welf. & Inst. Code, § 300 *(check all that apply):*
   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)
2. ☐ The child is adjudged a dependent of the court.
3. a. ☐ Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for removal from the home; or
   b. ☐ The child is an Indian child and active efforts as detailed in the record ☐ were ☐ were not provided to prevent the breakup of the Indian family, and these efforts have proved unsuccessful.
4. a. ☐ The county agency solicited and integrated into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____.
   b. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____, and the agency is ordered to do so and submit an updated case pan within 30 days of the date of this hearing.
   c. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* _____, and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.
5. The court advised the
   ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian ☐ other *(specify):*
   that no reunification services will be provided as a result of the guardianship of the child established in this matter.
6. The ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian ☐ other *(specify):*
   signed a *Guardianship (Juvenile)—Consent and Waiver of Rights* (form JV-419), agreeing to the guardianship of the child, the waiver of his or her rights to family maintenance services and family reunification services, and, in the case of an Indian child, the waiver of his or her rights under the Indian Child Welfare Act. A signed form JV-419 for each individual indicated above was filed with the court.
7. a. ☐ The child signed a *Guardianship (Juvenile)—Child's Consent and Waiver of Rights* (form JV-419A), agreeing to the establishment of the guardianship and the waiver of his or her rights to family maintenance services and family reunification services. The child's signed form JV-419A was filed with the court.
   b. ☐ The child is prevented from providing a meaningful response to the request for guardianship and a waiver of his or her rights to family maintenance services and family reunification services because of the child's
      (1) ☐ age.
      (2) ☐ physical condition.
      (3) ☐ emotional condition.
      (4) ☐ mental condition.
8. ☐ The child is an Indian child, and an authorized representative of the child's tribe signed a form JV-419 stating the tribe's agreement to the guardianship of the child, the waiver of the tribe's interests in family maintenance services and family reunification services, and the waiver of the tribe's rights under the Indian Child Welfare Act.
9. ☐ The establishment of a legal guardianship is in the child's best interest.
10. ☐ The county agency is ordered to release the child to the legal guardian named in item 11.
11. The court appoints *(name):*
    as the legal guardian of the child's ☐ person ☐ estate and orders the clerk of the court to issue letters of guardianship.

Form Approved for Optional Use
Judicial Council of California
JV-418 [Rev. January 1, 2020]

Welfare and Institutions Code, § 360(a);
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT

(Welf. & Inst. Code, §§ 361, 361.2)

1. ☐ The child is a person described by Welf. & Inst. Code, § 300 *(check all that apply):*

   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)

   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)

   and is adjudged a dependent of the court.

Circumstances justifying removal from custodial parent

2. ☐ There is clear and convincing evidence of the circumstances stated in Welf. & Inst. Code, § 361 regarding the persons specified below *(check all that apply):*

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

3. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and

   a. ☐ Qualified expert witness testimony was provided by ; and

   b. ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and

   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:

      ☐ mother ☐ biological father ☐ legal guardian

      ☐ presumed father ☐ Indian custodian

      ☐ other *(specify):*

4. Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for removal from the home.

5. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

   e. ☐ These efforts have proved unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** *(check all that apply):*

   ☐ mother ☐ biological father ☐ legal guardian

   ☐ presumed father ☐ Indian custodian

   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Family finding and engagement

7. a. ☐ The county agency has exercised due diligence to identify, locate, and contact the child's relatives.
   b. ☐ The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.
      (1) ☐ The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with the family or domestic violence.
      (2) ☐ The county agency must submit a report to the court on or before (date): detailing the diligent efforts made and the results of such efforts.

Case plan development

8. a. ☐ The county agency solicited and integrated into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   b. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
   c. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):* and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

Custody and placement

9. ☐ The ☐ mother ☐ presumed father ☐ biological father did not reside with the child at the time the petition was filed and ☐ does ☐ does not desire custody of the child.
   a. ☐ By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:
      ☐ Mother ☐ Presumed father ☐ Biological father
   b. ☐ The factual basis for the findings in this item is stated on the record.

10. ☐ **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
   a. ☐ in the approved home of a relative.
   b. ☐ in the approved home of a nonrelative extended family member.
   c. ☐ in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
   d. ☐ with a foster family agency for placement in a foster family home.
   e. ☐ in a suitable licensed community care facility.

11. ☐ **Placement with the child's relative,** *(name):* has been independently considered by the court and is denied for the reasons stated on the record.

12. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

CHILD'S NAME:	CASE NUMBER:

12. e. ☐ The child is placed in accordance with the preferences established by the tribe; or

f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

13. ☐ **The child's out-of-home placement is necessary.**

14. ☐ **The child's current placement is appropriate.**

15. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

a. ☐ The matter is continued to the date and time indicated in form JV-415, item 17 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.

b. ☐ Other *(specify):*

16. ☐ **The child is placed outside the state of California and that out-of-state placement**

a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.

b. ☐ is not the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-415, item 17 for a ☐ written ☐ oral report by the county agency on the progress made toward

(1) ☐ returning the child to California and locating an appropriate placement within California.

(2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

(3) ☐ other *(specify):*

Reunification services

17. ☐ **Provision of reunification services to the biological father** ☐ will ☐ will not benefit the child.

18. ☐ **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.

a. ☐ Participation in the program ☐ is ☐ is not in the child's best interest.

b. ☐ The program ☐ is ☐ is not suitable to meet the needs of the mother and child.

19. ☐ **The following person is incarcerated:**

☐ mother ☐ legal guardian ☐ other *(specify):*

☐ presumed father ☐ Indian custodian

and reasonable reunification services are

a. ☐ granted.

b. ☐ denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.

20. ☐ **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**

a. The ☐ mother ☐ legal guardian ☐ other *(specify):*

☐ presumed father ☐ Indian custodian

is a person described in Welf. & Inst. Code, § *(specify):*

☐ 361.5(b)(3) ☐ 361.5(b)(7) ☐ 361.5(b)(9) ☐ 361.5(b)(11) ☐ 361.5(b)(13) ☐ 361.5(b)(16)

☐ 361.5(b)(4) ☐ 361.5(b)(8) ☐ 361.5(b)(10) ☐ 361.5(b)(12) ☐ 361.5(b)(15) ☐ 361.5(b)(17)

and reunification services are

(1) ☐ granted, because, by clear and convincing evidence, reunification is in the best interest of the child.

(2) ☐ denied.

CHILD'S NAME:	CASE NUMBER:

20. b. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.

c. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(2), and reunification services are
(1) ☐ granted.
(2) ☐ denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.

d. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are
(1) ☐ granted, because
(a) ☐ reunification services are likely to prevent reabuse or neglect.
(b) ☐ the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.
(2) ☐ denied.

e. The ☐ mother ☐ legal guardian
☐ presumed father ☐ Indian custodian
☐ other person who is a legal parent of the child *(name):*
is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are
(1) ☐ granted, because, by clear and convincing evidence, reunification is in the best interest of the child.
(2) ☐ denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.
(3) ☐ The factual basis for the findings in this item is stated on the record.

f. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to services. Reunification services are denied.

g. **The county agency must provide reunification services,** and the following must participate in the reunification services stated in the case plan:
☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
☐ Indian custodian ☐ Other *(specify):*

21. **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify):*

Efforts

22. The county agency ☐ has ☐ has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

CHILD'S NAME:	CASE NUMBER:

23. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

Siblings

24. ☐ **The child does not have siblings under the court's jurisdiction.**

25. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

26. ☐ The ☐ mother ☐ presumed father ☐ biological father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):* is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

27. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

28. a. The child's educational needs ☐ are ☐ are not being met.
b. The child's physical needs ☐ are ☐ are not being met.
c. The child's mental health needs ☐ are ☐ are not being met.
d. The child's developmental needs ☐ are ☐ are not being met.

29. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

30. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
a. ☐ stated in the social worker's report.
b. ☐ specified here:

31. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 30:
a. ☐ Social worker.
b. ☐ Parent *(name):*
c. ☐ Surrogate parent *(name):*
d. ☐ Educational representative *(name):*
e. ☐ Other *(name):*

CHILD'S NAME:	CASE NUMBER:

32. ☐ The child's education placement has changed since the date the child was physically removed from the home.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

33. ☐ **Child 14 years of age or older:**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

Advisements

34. ☐ **Child under the age of three years or member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group:
    a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date the child entered foster care under Welf. & Inst. Code, § 366.21(e).

Six-month hearing date:

    b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:
        • Whether the sibling group was removed from parental care as a group;
        • The closeness and strength of the sibling bond;
        • The ages of the siblings;
        • The appropriateness of maintaining the sibling group;
        • The detriment to the child if sibling ties are not maintained;
        • The likelihood of finding a permanent home for the sibling group;
        • Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
        • The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
        • The best interest of each child in the sibling group.
    c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

CHILD'S NAME:	CASE NUMBER:

35. ☐ **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, § 366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

Twelve-month permanency hearing date:

36. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).

c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(10) of the California Rules of Court to any party not present.

e. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who had relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*
(2) *(name):*
(3) *(name):*
(4) *(name):*

f. **The likely date** by which the permanent plan will be achieved is *(specify date):*

JV-430

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:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING **(Welf. & Inst. Code, § 366.21(e))**	CASE NUMBER:

1. **Six-month status review hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-430 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(e), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **The county agency**

a. ☐ has

b. ☐ has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

e. ☐ These efforts have proved unsuccessful.

12. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

Siblings

13. ☐ **The child does not have siblings under the court's jurisdiction.**

14. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

15. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

16. a. The child's educational needs ☐ are ☐ are not being met.

b. The child's physical needs ☐ are ☐ are not being met.

c. The child's mental health needs ☐ are ☐ are not being met.

d. The child's developmental needs ☐ are ☐ are not being met.

CHILD'S NAME:	CASE NUMBER:

17. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on .

18. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
    a. ☐ stated in the social worker's report.
    b. ☐ specified here:

19. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
    a. ☐ Social worker.
    b. ☐ Parent *(name):*
    c. ☐ Surrogate parent *(name):*
    d. ☐ Educational representative *(name):*
    e. ☐ Other *(name):*

20. ☐ The child's education placement has changed since the last review hearing.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

21. ☐ **Child 14 years of age or older:**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
    a. ☐ *Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
    b. ☐ *Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
    c. ☐ *Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.

23. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
    a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
    b. ☐ *Visitation Attachment: Sibling* (form JV-401).
    c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

CHILD'S NAME:	CASE NUMBER:

24. **All prior orders not in conflict with this order remain in full force and effect.**

25. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

26. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

   a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
   b. ☐ 12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))
   c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
   (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

   d. ☐ Other *(specify):*

27. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED
(Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Reunification services

7. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan, and accessing or developing the resources necessary to satisfy the case plan;

   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

   e. ☐ These efforts have proved unsuccessful.

8. **For child under the age of three years at time of initial removal or a member of a sibling group**

   a. ☐ Having considered the relevant evidence, including the following factors

      (1) ☐ Whether there has been significant progress in resolving the problems that led to the removal;

      (2) ☐ Whether the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs has been demonstrated; and

      (3) ☐ Whether there has been consistent and regular contact and visitation with the child.

      The court finds there is a substantial probability that the child may be returned to the

      ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian ☐ other *(specify):*

      within six months of the date of this hearing or within 12 months of the date the child entered foster care, whichever is sooner.

   b. Reasonable services have not been provided to the

      ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian ☐ other *(specify):*

      by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has *(specify):*

9. **Reunification services are continued for the**

   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*

   a. ☐ as previously ordered.

   b. ☐ as modified

      (1) ☐ on the record.

      (2) ☐ in the case plan.

10. ☐ **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, placed with a fit and willing relative or in another planned permanent living arrangement is *(specify date):*

CHILD'S NAME:	CASE NUMBER:

Important individuals

11. ☐ **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

12. ☐ The ☐ mother ☐ biological father ☐ Indian custodian ☐ presumed father ☐ legal guardian ☐ other *(specify):* is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

Advisement

13. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twelve-month permanency hearing date:

CHILD'S NAME:	CASE NUMBER:

SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

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Judicial Council of California
JV-433 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(e), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

Reunification services

7. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:
   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
   e. ☐ These efforts have proved unsuccessful.

8. ☐ The child is an Indian child or there is reason to know that the child is an Indian child, and:
   a. ☐ Qualified expert witness testimony was provided by ; and
   b. ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
      ☐ mother ☐ biological father ☐ legal guardian
      ☐ presumed father ☐ Indian custodian
      ☐ other *(specify):*

9. ☐ **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
   a. ☐ The child was under the age of three years on the date of the initial removal from the home.
   b. ☐ The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
      (1)
      (2)
      (3)
      (4)
      (5)
      (6)
   c. By clear and convincing evidence the
      ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian
      ☐ other *(specify):*

      failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
   d. Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.

CHILD'S NAME:	CASE NUMBER:

10. ☐ **Reunification services terminated: Child of any age**

a. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence,
(1) ☐ the person's whereabouts remain unknown.
(2) ☐ the person has not had contact with the child for six months.

b. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.

c. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because it is determined that the person is deceased.

11. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

12. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
b. ☐ The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
(1) ☐ as stated on the record.
(2) ☐ as follows:

Health

13. ☐ The ☐ mother ☐ biological father ☐ other *(specify):*
☐ presumed father ☐ legal guardian
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

Setting for selection of permanent plan

14. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
b. By clear and convincing evidence reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).

CHILD'S NAME:	CASE NUMBER:

14. d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ (Juvenile Dependency)* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) (name):
(2) (name):
(3) (name):
(4) (name):

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is *(specify date):*

15. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

b. ☐ The child remain in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

CHILD'S NAME:	CASE NUMBER:

16. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interests are *(describe):*

JV-435

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER 12-MONTH PERMANENCY HEARING (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

1. **Twelve-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify)*:	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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Judicial Council of California
JV-435 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(f), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child is an Indian child or ☐ there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ Other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **The county agency**

a. ☐ has
b. ☐ has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

e. ☐ These efforts have proved unsuccessful.

12. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

Siblings

13. ☐ **The child does not have siblings under the court's jurisdiction.**

14. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

15. a. ☐ **A limitation on the right of the parents to make educational decisions for the child is not necessary.** The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

CHILD'S NAME:	CASE NUMBER:

16. a. The child's educational needs ☐ are ☐ are not being met.
    b. The child's physical needs ☐ are ☐ are not being met.
    c. The child's mental health needs ☐ are ☐ are not being met.
    d. The child's developmental needs ☐ are ☐ are not being met.

17. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

18. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
    a. ☐ stated in the social worker's report.
    b. ☐ specified here:

19. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
    a. ☐ Social worker.
    b. ☐ Parent *(name):*
    c. ☐ Surrogate parent *(name):*
    d. ☐ Educational representative *(name):*
    e. ☐ Other *(name):*

20. ☐ The child's education placement has changed since the last review hearing.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

21. ☐ **Child 14 years of age or older:**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
    a. ☐ *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.
    b. ☐ *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.
    c. ☐ *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.

CHILD'S NAME:	CASE NUMBER:

23. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
    a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
    b. ☐ *Visitation Attachment: Sibling* (form JV-401).
    c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25. ☐ **Other findings and orders:**
    a. ☐ See attached.
    b. ☐ *(Specify):*

26. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

    a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
    b. ☐ 18-month permanency hearing (Welf. & Inst. Code, § 366.22)
    c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
    (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

    d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
    e. ☐ Other *(specify):*

27. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED

(Welf. & Inst. Code, § 366.21(f))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**
3. ☐ **The child's current placement is appropriate.**
4. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 25 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

Reunification services

7. a. ☐ **There is substantial probability that the child may be returned** to the
   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*
   by the date set for the 18-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has

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JV-437 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(f);
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

7. a. (1) made significant progress in resolving the problems that led to the removal;
(2) demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the safety, protection, physical and emotional health, and special needs of the child; and
(3) consistently and regularly contacted and visited the child.

b. ☐ Reasonable services have not been provided to the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*

8. Reunification services are continued for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*
a. ☐ as previously ordered.
b. ☐ as modified
(1) ☐ on the record.
(2) ☐ in the case plan.

9. ☐ **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, or in an identified placement with a specific goal is *(specify date):*

Important individuals

10. ☐ **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
(1) ☐ as stated on the record.
(2) ☐ as follows:

Health

11. ☐ The ☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

Advisement

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 18-month permanency hearing set on a date within 18 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Eighteen-month permanency hearing date:

CHILD'S NAME:	CASE NUMBER:

TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.21(f))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

2. **Reunification services are terminated.**

3. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

   e. ☐ These efforts have proved unsuccessful.

4. ☐ The child is an Indian child or there is reason to know that the child is an Indian child, and

   a. ☐ Qualified expert witness testimony was provided by *(Name):* ; and

   b. ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and

   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:

      ☐ mother ☐ biological father ☐ legal guardian
      ☐ presumed father ☐ Indian custodian
      ☐ other *(specify):*

Placement

5. **The child's out-of-home placement is necessary.**

6. ☐ **The child's current placement is appropriate.**

7. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

   a. ☐ The matter is continued to the date and time indicated in form JV-435, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.

   b. ☐ Other *(specify):*

8. ☐ There has been a change in the child's placement and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*

   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or

   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

CHILD'S NAME:	CASE NUMBER:

8. c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

   e. ☐ The child is placed in accordance with the preferences established by the tribe; or

   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

9. ☐ **The child is placed outside the state of California and that out-of-state placement**

   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.

   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-435, item 26 for a ☐ written ☐ oral report by the county agency on the progress made toward

      (1) ☐ returning the child to California and locating an appropriate placement within California.

      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

      (3) ☐ Other *(specify):*

10. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

11. ☐ **Child in out-of home placement for six months or longer**

   a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

   b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

   c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

      (1) ☐ as stated on the record.

      (2) ☐ as follows:

Health

12. ☐ The ☐ mother ☐ biological father ☐ other *(specify):*
☐ presumed father ☐ legal guardian
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

CHILD'S NAME:	CASE NUMBER:

Selection of permanent plan

13. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

b. ☐ The child remains in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

14. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

CHILD'S NAME:	CASE NUMBER:

15. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*

(2) *(name):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

JV-440

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:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING **(Welf. & Inst. Code, § 366.22)**	CASE NUMBER:

1. **Eighteen-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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Judicial Council of California
JV-440 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.22, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.720
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **The county agency**

a. ☐ has

b. ☐ has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

e. ☐ These efforts have proved unsuccessful.

13. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

Siblings

14. ☐ **The child does not have siblings under the court's jurisdiction.**

15. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

16. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

CHILD'S NAME:	CASE NUMBER:

17. a. The child's educational needs ☐ are ☐ are not being met.
    b. The child's physical needs ☐ are ☐ are not being met.
    c. The child's mental health needs ☐ are ☐ are not being met.
    d. The child's developmental needs ☐ are ☐ are not being met.

18. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

19. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
    a. ☐ stated in the social worker's report.
    b. ☐ specified here:

20. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:
    a. ☐ Social worker.
    b. ☐ Parent *(name):*
    c. ☐ Surrogate parent *(name):*
    d. ☐ Educational representative *(name):*
    e. ☐ Other *(name):*

21. ☐ The child's education placement has changed since the last review hearing.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

22. ☐ **Child 14 years of age or older:**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
    a. ☐ *Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22)* (form JV-441), which is attached and incorporated by reference.
    b. ☐ *Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22)* (form JV-442), which is attached and incorporated by reference.
    c. ☐ *Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.22)* (form JV-443), which is attached and incorporated by reference.

CHILD'S NAME:	CASE NUMBER:

24. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

27. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

   a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
   b. ☐ Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)
   c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
   (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

   d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
   e. ☐ Other *(specify):*

28. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: _____

Date: _____ _____

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

2. **Reunification services are terminated.**

3. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:

   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;

   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and

   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

   e. ☐ These efforts have proved unsuccessful.

4. ☐ The child is an Indian child or there is reason to know that the child is an Indian child, and

   a. ☐ Qualified expert witness testimony was provided by _____ ; and
   (Name):

   b. ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and

   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:

      ☐ mother ☐ biological father ☐ legal guardian
      ☐ presumed father ☐ Indian custodian
      ☐ other *(specify):*

Placement

5. **The child's out-of-home placement is necessary.**

6. ☐ **The child's current placement is appropriate.**

7. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

   a. ☐ The matter is continued to the date and time indicated in form JV-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.

   b. ☐ Other *(specify):*

8. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*

   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or

   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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JV-442 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(f), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

e. ☐ The child is placed in accordance with the preferences established by the tribe; or

f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

9. ☐ **The child is placed outside the state of California and that out-of-state placement**

a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.

b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made toward

(1) ☐ returning the child to California and locating an appropriate placement within California.

(2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

(3) ☐ Other *(specify):*

10. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

11. ☐ **Child in an out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

12. ☐ The ☐ mother ☐ biological father ☐ other *(specify):* ☐ presumed father ☐ legal guardian is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

Selection of permanent plan

13. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

CHILD'S NAME:	CASE NUMBER:

13. b. ☐ The child remains in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

14. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

15. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.22(c).

CHILD'S NAME:	CASE NUMBER:

15. d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*

(2) *(name):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

DRAFT - Not approved by Judicial Council

JV-443

CHILD'S NAME:	CASE NUMBER:

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED

(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ There has been a change in the child's placement and the child is an Indian child, or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

Reunification services

7. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
   a. ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian ☐ other *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-443 [Rev. January 1, 2020]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.22, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.720
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

7. (1) ☐ who is making significant and consistent progress in a substance abuse treatment program.
   (2) ☐ who is recently discharged from incarceration, institutionalization, or the custody of the Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return.
   (3) ☐ who was a minor parent or a nonminor dependent parent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

and

b. **There is a substantial probability that the child may be returned to the**
   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*
   by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has
   (1) consistently and regularly contacted and visited the child;
   (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
   (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and
      (a) ☐ to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
      (b) ☐ to complete a treatment plan postdischarge from incarceration or institutionalization.

c. The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause pursuant to Welf. and Inst. Code section 352 to continue the 18-month status review to *(specify date):*

8. **Reunification services are continued for the**
   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*
   a. ☐ as previously ordered.
   b. ☐ as modified
      (1) ☐ on the record.
      (2) ☐ in the case plan.

9. ☐ **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or for a child 16 years of age or older in another planned permanent living arrangement *(specify date):*

Important individuals

10. ☐ **Child in out-of-home placement for six months or longer**
   a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   b. ☐ The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
      (1) ☐ as stated on the record.
      (2) ☐ as follows:

CHILD'S NAME:	CASE NUMBER:

Health

11. ☐ The ☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

Advisement

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. **That hearing may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twenty-four-month permanency hearing date:

JV-455

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:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING **(Welf. & Inst. Code, § 366.25)**	CASE NUMBER:

1. **Twenty-four-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

   h.

Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **The county agency**
    a. ☐ has
    b. ☐ has not

    complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:
    a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
    b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
    c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
    d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
    e. ☐ These efforts have proved unsuccessful.

13. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

Siblings

14. ☐ **The child does not have siblings under the court's jurisdiction.**

15. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

16. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

    b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

CHILD'S NAME:	CASE NUMBER:

17. a. The child's educational needs ☐ are ☐ are not being met.
    b. The child's physical needs ☐ are ☐ are not being met.
    c. The child's mental health needs ☐ are ☐ are not being met.
    d. The child's developmental needs ☐ are ☐ are not being met.

18. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

19. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
    a. ☐ stated in the social worker's report.
    b. ☐ specified here:

20. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:
    a. ☐ Social worker.
    b. ☐ Parent *(name):*
    c. ☐ Surrogate parent *(name):*
    d. ☐ Educational representative *(name):*
    e. ☐ Other *(name):*

21. ☐ The child's education placement has changed since the last review hearing.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

22. ☐ **Child 14 years of age or older:**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
    a. ☐ *Twenty-Four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.
    b. ☐ *Twenty-Four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.

24. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
    a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
    b. ☐ *Visitation Attachment: Sibling* (form JV-401).
    c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:

26. ☐ **Other findings and orders:**
    a. ☐ See attached.
    b. ☐ *(Specify):*

27. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

    a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
    b. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
    (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

    c. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
    d. ☐ Other *(specify):*

28. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.25)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and as set out in detail in the record:
   a. Affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
   c. To the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
   d. These efforts and case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
   e. ☐ These efforts have proved unsuccessful.
5. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
   a. ☐ Qualified expert witness testimony was provided by _____ ; and
      (Name):
   b. ☐ Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
   c. ☐ There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child :
      ☐ mother ☐ biological father ☐ legal guardian
      ☐ presumed father ☐ Indian custodian
      ☐ other *(specify):*
6. ☐ There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one):*
   a. ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
   b. ☐ An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
   e. ☐ The child is placed in accordance with the preferences established by the tribe; or
   f. ☐ The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.
7. ☐ **The child's current placement is appropriate.**

Form Approved for Optional Use
Judicial Council of California
JV-457 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.25, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.722
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-455, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

9. ☐ **The child is placed outside the state of California and that out-of-state placement**
   a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-455, item 27 for a ☐ written ☐ oral report by the county agency on the progress made toward
      (1) ☐ returning the child to California and locating an appropriate placement within California.
      (2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
      (3) ☐ Other *(specify):*

Selection of permanent plan

10. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

11. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
   a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
      The likely date by which the child's permanent plan will be achieved is *(specify date):*
   b. ☐ The child remains in foster care with a permanent plan of *(specify):*
      (1) ☐ Return home.
      (2) ☐ Adoption.
      (3) ☐ Tribal customary adoption.
      (4) ☐ Legal guardianship.
      (5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
         ☐ return home ☐ establish legal guardianship
         ☐ place for adoption ☐ place with a relative
         ☐ other *(specify):*

      The likely date by which the child's permanent plan will be achieved is *(specify date):*
   c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

12. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**
   a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*
   b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*
   c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

CHILD'S NAME:	CASE NUMBER:

13. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.25(b).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*

(2) *(name):*

(3) *(name):*

(4) *(name):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

Important individuals

14. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

15. ☐ The ☐ mother ☐ biological father ☐ Indian custodian ☐ presumed father ☐ legal guardian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

JV-600

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
JUVENILE WARDSHIP PETITION ☐ § 601(a) ☐ § 601(b) ☐ § 602	CASE NUMBER:

1. Petitioner on information and belief alleges the following:

   a. ☐ The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code *(check applicable boxes; see attachments for concise statements of facts):*
   ☐ 601(a) ☐ 601(b) ☐ 602 Violation *(specify code section):*

   b. ☐ Under a previous order of this court, dated , the child was declared a ward under Welfare and Institutions Code section ☐ 601(a) ☐ 601(b) ☐ 602

c. Child's name and address:	d. Age:	e. Date of birth:	f. Sex:

g. Name: Address: ☐ mother ☐ father ☐ guardian ☐ unknown If mother or father *(check all that apply):* ☐ legal ☐ biological ☐ presumed ☐ alleged	h. Name: Address: ☐ mother ☐ father ☐ guardian ☐ unknown If mother or father *(check all that apply):* ☐ legal ☐ biological ☐ presumed ☐ alleged
i. Name: Address: ☐ mother ☐ father ☐ guardian ☐ unknown If mother or father *(check all that apply):* ☐ legal ☐ biological ☐ presumed ☐ alleged	j. Other *(name, address, and relationship to child):* ☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.
k. Attorney for child *(if known):* Address: Phone number:	*l.* Child is ☐ not detained. ☐ detained. Date and time of detention *(custody):* Current place of detention *(address):*

(See important notices on page 2.)

Form Approved for Optional Use
Judicial Council of California
JV-600 [Rev. September 1, 2020]

Welfare and Institutions Code, § 601 et seq.
Cal. Rules of Court, rule 5.504
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

2. Petitioner requests that the court find these allegations to be true.

3. ☐ Petitioner requests a hearing to determine whether the child should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707 for the following alleged offense(s) *(specify code section(s)):*

4. Indian Child Welfare Act Inquiry

a. ☐ I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).

b. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry, and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and submit it to the court as soon as possible.

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

☐ Number of pages attached: _____

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and your child may be required to pay any *restitution* owed to the victim and any fines or penalties ordered by the court. In addition, if you or family members other than your child receive services or legal assistance paid for by the court or county, you may be required to pay back the cost of those services unless the court or county decides that you can't afford to pay.

RECORD SEALING

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or *www.courts.ca.gov/forms,* for more information about record sealing.

Item number: 52

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: April 10, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Miscellaneous Technical Changes (Revise forms GV-100, GV-130, JV-250, JV-255, JV-296, JV-297, JV-299, NC-500-INFO,and NC-520)

Committee or other entity submitting the proposal:
Judicial Council staff

Staff contact (name, phone and e-mail): Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 16–17, 2019

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Revise forms GV-100, GV-130, JV-250, JV-255, JV-296, JV-297, JV-299, NC-500-INFO, and NC-520

Recommended by
Judicial Council staff
Susan R. McMullan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
September 1, 2019

Date of Report
April 10, 2019

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation, and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective September 1, 2019, revise:

1. *Petition for Gun Violence Restraining Order* (form GV-100) to correct the numbering of the checkboxes for attachments in items 10 and 11, to be "Attachment 10" and "Attachment 11."

2. *Gun Violence Restraining Order After Hearing* (form GV-130) to remove the duplicate title in the footer of page 2 of the form.

3. *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) since rule 5.488 is cited in the footer on page 1, but there is no such rule: delete 5.488 and insert rules 5.620, 5.625, and 5.630.

4. *Restraining Order—Juvenile* (form JV-255) to delete the citation to rule 5.488 in the footer on page 1, and add citations to rules 5.620, 5.625, and 5.630.

5. *De Facto Parent Statement* (form JV-296) to change the footer citation to read "rules 5.534(a) and 5.502(10)," not rule 5.534(e).

6. *De Facto Parent Order* (form JV-297) to change the footer to read "rules 5.534(a) and 5.502(10)," not 5.534(e).

7. *De Facto Parent Pamphlet* (form JV-299) to change the footer to read "rules 5.534(a) and 5.502(10)," instead of 5.534(e) on pages 1 and 2.

8. *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) to move a misplaced parenthetical phrase from item 2f to item 2h, and correct the form reference in item 3 from form NC-110G to form NC-510G.

9. *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) to remove the reference to "all living parents" that was erroneously included in the bottom half of the form, and add an instruction at the top to check all boxes that apply.

The revised forms are attached at pages 4–27.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these 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. Forms GV-100, GV-130, JV-250, JV-255, JV-296, JV-297, JV-299, NC-500-INFO, and NC-520, at pages 4–27

GV-100 Petition for Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
03/01/19

NOT APPROVED BY
JUDICIAL COUNCIL

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

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner

a. Your Full Name:

_____

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

_____

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

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

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

2 Respondent

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: ____ Zip: _____

3 Venue

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

a. ☐ The Respondent lives in this county.
b. ☐ Other *(specify):* _____

4 Other Court Cases

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

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

This is not a Court Order.

Case Number:

4 a.

Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1) ☐ Civil Harassment			
(2) ☐ Domestic Violence			
(3) ☐ Divorce, Nullity, Legal Separation			
(4) ☐ Paternity, Parentage, Child Custody			
(5) ☐ Elder or Dependent Adult Abuse			
(6) ☐ Eviction			
(7) ☐ Workplace Violence			
(8) ☐ Criminal			
(9) ☐ Other *(specify):*			

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

5 Description of Respondent's Firearms, 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.

6 b. 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.

c. The facts supporting the above statements are set forth:

☐ Below

☐ On the attached form MC-031, *Attached Declaration*

7 Request for Gun Violence Restraining Order

I request that the court issue an order prohibiting Respondent from having in his or her custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, any firearms, ammunition, or magazines. I further request that Respondent be ordered to immediately surrender all firearms, ammunition, and magazines currently in his or her possession to a law enforcement officer or to sell the firearms, ammunition, and magazines to or store them with a licensed gun dealer.

8 No Fee to Serve (Notify) Restrained Person

If you want the sheriff or marshal to serve (notify) the restrained person about the orders, he or she will do it for free.

9 Request for Hearing

I request that the court set a hearing in this matter for the purpose of issuing a gun violence restraining order that will last for one year.

This is not a Court Order.

Case Number:

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 10.

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 11.

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.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

GV-130 Gun Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

Draft 3/25/2019
Not approved by 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.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF HEARING ☐ AND TEMPORARY RESTRAINING ORDER—JUVENILE	CASE NUMBER: JUVENILE: FAMILY:

1. **Protected person or persons**
   Full Name: Sex: Age: Relationship to Child:

2. **Restrained person**

   Full Name:
   Sex: ☐ M ☐ F Height: Weight: Hair Color: Eye Color:
   Race: Age: Date of Birth:
   Address *(if known):*
   City: State: Zip:

3. **Expiration date/Notice of court hearing**
   A court hearing is scheduled on the request for restraining orders against the person in item 2. Any temporary orders granted will expire at the end of the hearing scheduled for the date and time shown in the box below unless otherwise ordered. At the hearing, the judge may make restraining orders that could last up to three years.

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

Form Adopted for Mandatory Use
Judicial Council of California
JV-250 [Rev. September 1, 2019]

Welfare and Institutions Code, §§ 213.5, 213.7, 304,362, 362.4, 726, 726.5;
Family Code, §§ 6218, 6380, 6389;
Penal Code, §§ 136.2, 29825;
Cal. Rules of Court, rules 5.620, 5.625 and 5.630
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. ☐ Hearing on this temporary restraining order
   a. Date hearing held: Time: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons and attorneys present *(names):*

5. ☐ Temporary orders *(select one)*
   a. ☐ Granted. The court has granted the temporary orders that are checked below.
   b. ☐ Not granted. No temporary orders are granted pending the scheduled hearing in item 3.

THE COURT FINDS AND ORDERS

6. ☐ Restrained person (child in delinquency proceedings) *(Complete either 6 or 7, not both.)*
   a. is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
   b. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No.: issued on *(date):* , as an exception to the "no-contact" provision in item 6a of this order.
   c. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 6a of this order.

7. ☐ Restrained person (other than child in delinquency proceeding) *(Complete either 6 or 7, not both.)*
   a. **must not do the following things to anyone in item 1:**
      (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
      (2) ☐ Contact, either directly or indirectly in **any** way, including but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means
         ☐ except for visitation as indicated in c below.
   b. ☐ **must stay away** at least *(specify):* yards from *(check all that apply).*
      (1) ☐ anyone in item 1, except for visitation as indicated in item c below.
      (2) ☐ home of anyone in item 1.
      (3) ☐ job or workplace of anyone in item 1.
      (4) ☐ vehicle of anyone in item 1.
      (5) ☐ school of anyone in item 1.
      (6) ☐ the child(ren)'s school or child care.
      (7) ☐ Other *(specify):*
         ☐ except for visitation as indicated in item c below.
   c. ☐ has the right to visit the child(ren) named in item 1 as follows:
      (1) ☐ None
      (2) ☐ Visitation according to the attached schedule *(Form JV-205 must be attached if any visitation is ordered.)*
   d. ☐ **must move** immediately from *(address):*

      and take only personal clothing and belongings.
   e. ☐ must NOT take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of any one named in item 1. If this box is not checked, the court has found good cause not to make this order.

CASE NAME:	CASE NUMBER:

8. **No guns or other firearms or ammunition** *(applies only if box 5a is checked on this form)*
   a. The restrained person cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
   b. The restrained person must
      - within 24 hours of receiving this order sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control.
      - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. (*Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) may be used for the receipt.)
      - bring a copy of the receipt or *Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) to the hearing listed in item 3.
   c. ☐ The court has received information that the restrained person owns or possesses a firearm.
9. ☐ The protected person(s) have the right to record communications made by the restrained person that violate the court's orders.
10. ☐ **Possession and protection of animals**
    a. ☐ Protected person *(name):* is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by a person protected by this order or residing in the residence or household of a person protected by this order. *(Identify animals by, e.g., type, breed, name, color, sex.)*
    b. ☐ The restrained person must stay at least yards away from—and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of—the animals listed above.
11. ☐ **Other orders** *(specify):*
12. ☐ A criminal protective order on form CR-160 is in effect as follows:
    Case number: Expiration date: County *(if known):*
13. **Transmittal order.** The data in this order must be transmitted within one business day to law enforcement personnel.
    This order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS).
    a. ☐ The court will enter the order into CARPOS through CLETS directly.
    b. ☐ The court or its designee will transmit a copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CARPOS through CLETS.
    If designee, insert name:
14. ☐ **Service of temporary order**
    a. ☐ The restrained person was present at the time the order was made. No further service is needed.
    b. ☐ The restrained person was not present at the time the order was made. This order must be served.
15. ☐ Service of this notice of hearing must be at least ☐ five or ☐ *(specify):* days before the hearing.

Date:

JUDICIAL OFFICER

CASE NAME:	CASE NUMBER:

Warnings to the Restrained Person

If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail or prison, pay a fine of up to $1,000, or both. Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

You cannot have guns, firearms, or ammunition. If the box in item 5a is checked, the court issued a temporary restraining order, which means you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while the order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

Service of order by mail. If the judge makes a restraining order at the hearing that has the same orders as in this form, you will get a copy of that order by mail at your last known address, which is written in item 2. If this address is not correct, or to find out if the orders were made permanent, contact the court.

Instruction for Law Enforcement

Applicable only if the box in item 5a is checked.

Enforcing the restraining order. This order is effective when made. It is enforceable in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

Conflicting orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Certificate of Compliance With VAWA for Temporary Orders

This temporary protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265, (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

CLERK'S CERTIFICATE

[SEAL]

I certify that the foregoing *Temporary Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
RESTRAINING ORDER—JUVENILE **Order After Hearing**	CASE NUMBER: JUVENILE: FAMILY:

1. **Protected person or persons**

Full Name	Sex	Age	Relationship to Child

2. **Restrained person**

Full Name:
Sex: ☐ M ☐ F Height: Weight: Hair Color: Eye Color:
Race: Age: Date of Birth:
Address *(if known):*
City: State: Zip:

3. **Order after hearing**

a. This order after hearing expires on *(date and time):*
- If no expiration date is written, the restraining order ends three years after the date of the hearing, as indicated below.
- If no time is written, the restraining order ends at midnight on the expiration date.

b. Date hearing held: Time: Dept.: Room:

c. Judicial officer *(name):*

d. Persons and attorneys present *(names):*

e. ☐ The restrained person was present. No further service is needed.

f. ☐ The restrained person was not present. This order must be served.

(1) ☐ The orders on this form are the same as in the prior temporary restraining order except for the expiration date, and the temporary order and notice of hearing was personally served on the restrained person. The restrained person can be served by mail.

(2) ☐ The orders on this form are different from those in the prior temporary restraining order. An adult 18 years or older—not the person or persons to be protected—must personally serve a copy of this order on the restrained person.

Form Adopted for Mandatory Use
Judicial Council of California
JV-255 [Rev. September 1, 2019]

Welfare and Institutions Code, §§ 213.5, 213.7, 304, 362.4, 726.5;
Family Code, §§ 6218, 6380, 6389;
Penal Code, §§ 136.2, 29825;
Cal. Rules of Court, rules 5.620, 5.625 and 5.630
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

THE COURT FINDS AND ORDERS

4. ☐ Restrained person (child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
   a. is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
   b. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No. issued on *(date):* , as an exception to the "no-contact" provision in item 4a of this order.
   c. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 4a of this order.

5. ☐ Restrained person (other than child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
   a. **must not do the following things to anyone in item 1:**
      (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
      (2) ☐ Contact, either directly or indirectly in **any** way, including but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means
          ☐ except for visitation as indicated in c below.
   b. ☐ **must stay away** at least *(specify):* yards from *(check all that apply)*
      (1) ☐ anyone in item 1, except for visitation as indicated in item c below.
      (2) ☐ home of anyone in item 1.
      (3) ☐ job or workplace of anyone in item 1.
      (4) ☐ vehicle of anyone in item 1.
      (5) ☐ school of anyone in item 1.
      (6) ☐ the children's school or child care.
      (7) ☐ Other *(specify):*
          ☐ except for visitation as indicated in c below
   c. ☐ has the right to visit the child(ren) named in item 1 as follows:
      (1) ☐ None
      (2) ☐ Visitation according to the attached schedule *(Form JV-205 must be attached if any visitation is ordered.)*
   d. ☐ must move immediately from *(address):*

      and take only personal clothing and belongings.
   e. ☐ must NOT take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of anyone named in item 1. If this box is not checked, the court has found good cause not to make this order.

6. **No guns or other firearms or ammunition**
   a. The restrained person cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
   b. The restrained person must
      - within 24 hours of receiving this order sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control.
      - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. (*Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) may be used for the receipt.)
   c. ☐ The court has received information that the restrained person owns or possesses a firearm.

7. ☐ A criminal protective order on form CR-160 is in effect as follows:
   Case number: Expiration date: County *(if known):*

8. ☐ The protected persons have the right to record communications made by the restrained person that violate the judge's orders.

CASE NAME:	CASE NUMBER:

9. ☐ **Possession and protection of animals**

   a. ☐ Protected person *(name):* is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by a person protected by this order or residing in the residence or household of a person protected by this order. *(Identify animals by, e.g., type, breed, name, color, sex.)*

   b. ☐ The restrained person must stay at least yards away from—and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of—the animals listed above.

10. ☐ **Other orders** *(specify):*

11. **Transmittal order.** The data in this order must be transmitted within one business day to law enforcement personnel. This order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS).

   a. ☐ The court will enter the order into CARPOS through CLETS directly.

   b. ☐ The court or its designee will transmit a copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CARPOS through CLETS.

   If designee, insert name:

Date:

JUDICIAL OFFICER

Warnings to the Restrained Person

If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail or prison, pay a fine of up to $1,000, or both.Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

You cannot have guns, firearms, or ammunition. You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while the order is in effect. If you do, you can go to jail and pay a $1,000 fine.You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

CASE NAME:	CASE NUMBER:

Instruction for Law Enforcement

Enforcing the restraining order. This order is effective when made. It is enforceable in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

Conflicting orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Certificate of Compliance With VAWA for Orders After Hearing

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been afforded reasonable notice and an opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

CLERK'S CERTIFICATE

[SEAL]

I certify that the foregoing *Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: Clerk, by _____, Deputy

JV-296 De Facto Parent Statement

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

Court name and street address:

Superior Court of California, County of

Case Number:

1. My/Our name(s): _____

2. The child's name: _____
   ☐ Boy ☐ Girl

3. Child's date of birth: _____ Age: _____
   Relationship to child (grandparent, foster parent, etc.):
   _____

4. The child has lived with me from:
   (date) _____ to *(date)* _____
   (date) _____ to *(date)* _____

5. I have had responsibility for the day-to-day care of the child from:
   (date) _____ to *(date)* _____
   (date) _____ to *(date)* _____

6. Information the judge should know about my relationship with the child. *(This part must be completed).*

   a. Amount of time I spend with the child (daily, weekly, etc.):
   _____
   _____
   _____

   d. I ☐ have ☐ have not attended court hearings about the child.

   e. I ☐ have ☐ have not sent a written report to the court about the child.

   b. Activities I do with the child: _____
   _____
   _____

   c. Kinds of information I have about the child that others may not have (medical, educational, behavioral, etc.):
   _____
   _____
   _____

7. I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct to my knowledge. This means if I lie on this form, I am committing a crime.

Date: _____ _____ ▶ _____
Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____
Type or print your name *Signature of person requesting de facto parent status*

JV-297 De Facto Parent Order

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

COURT WILL FILL OUT SECTION BELOW

The judge, after reading and reviewing the *De Facto Parent Request* and the *De Facto Parent Statement* filed by

(Name): _____

(Name): _____

asking to be appointed the de facto parent(s) of

(Child's name): _____

orders:

Court name and street address:

Superior Court of California, County of

Case Number:

1. ☐ The request for de facto parent status is granted.
2. ☐ The request for de facto parent status is denied.
3. ☐ The judge orders a hearing on the request for de facto parent status.

   The hearing will take place on _____

   at _____ a.m./p.m. in Department:

   _____

   of the Superior Court located at

   _____

   _____

   _____

The court ☐ does ☐ does not appoint a lawyer to represent the de facto parent.

The lawyer's name is: _____

(print name)

Date: _____ ▶ _____

Judge (or Judicial Officer)

This is a Court Order.

How does the juvenile court decide if I am a de facto parent?

Only the juvenile court can decide if you are a de facto parent. The judge will apply case law and rule 5.502(10). He or she will consider the care you gave the child and how long you did it. Also, the judge will decide if you can help the court understand what is best for the child—the child's best interests. If you have harmed the child or put the child at risk, the judge will likely decide that you are not a de facto parent.

If the judge decides you are not a de facto parent, you may still tell the judge what you feel or know about the child by filing JV-290, the *Caregiver Information Form*, or, if you are not the current caregiver, by sending a letter to the court.

De Facto Parent Pamphlet

You have been taking care of a child who has been declared a dependent of the juvenile court. You want to be more involved in the child's court case and are considering becoming a de facto parent.

This pamphlet describes:

- What your rights are if the juvenile court decides you are a de facto parent
- What is a de facto parent
- How to apply to the juvenile court to see if you are a de facto parent and
- How the juvenile court decides if you are a de facto parent.

If you want additional information or have specific questions, you may want to consult with an attorney. Call your local Bar Association to ask for a referral.

What are my rights as a de facto parent?

You have the following rights if a juvenile court judge finds that you are a de facto parent:

- To be present at dependency proceedings (Note: as a caregiver you can go to all dependency review and permanency hearings even if you are not a de facto parent.)
- To be represented by a lawyer, if you hire one. (In some cases the court may appoint a lawyer at no cost to you if the judge thinks it is necessary.)

Judicial Council of California
Revised September 1, 2019, Optional Form
Cal. Rules of Court, rules 5.534(a) and 5.502(10)

JV-299

www.courts.ca.gov

- To present evidence and cross-examine witnesses and
- To participate as a party in the disposition hearing and any hearing after that.

You can learn more about these rights by reading rule 5.534(a) and 5.502(10) of the California Rules of Court (available on the California Courts Web site: *www.courts.ca.gov*). Remember: A de facto parent is not the same as a parent. You do not have the right to:

- Reunification services
- Attorney fees (But in some cases the judge may give you an attorney, and the court will pay the fees.)
- Rehearing (You cannot ask for another hearing if you don't agree with the judge's decision, but you may have a right to an appeal.)

What is a "de facto parent"?

You may be a de facto parent if:

- The child is a dependent of the juvenile court.
- You are or have been taking care of the child every day.
- You have been acting as the child's parent.
- You are meeting (or have met) the child's needs for food, shelter, and clothing. You have also met the child's needs for care and affection.

No law says exactly what a "de facto parent" needs to be. Judges make this decision based on other court cases and on rule 5.502(10) of the California Rules of Court. You can read the rule on the California Courts Web site: *www.courts.ca.gov.*

How do I apply for de facto parent status?

To apply, fill out the following forms: JV-295 and JV-296.

Form JV-295 asks for your name, address, and phone number. On the form, you tell the judge that you or someone else wants to be the child's de facto parent. If you are asking for someone else, you need to write that person's information on the form. Then you sign and date the form. If you have an attorney, he or she will sign the form too.

On form JV-296, you say why you think the judge should decide that you or the other person named on JV-295 are a de facto parent. List important things you did for the child and how often you did them. This is so the judge has all the information he or she needs to make a decision. Give information like:

- How long you have cared for the child
- What you do with the child
- What you do for the child
- How much you care for the child
- What you know about the child's special needs, desires, hopes
- How you can meet the child's needs.

You can also attach letters from others who know you and the child. For example: teachers, therapists, pediatricians, spiritual advisors, etc.

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)
   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) (not needed if petitioner is the minor's guardian or dependency attorney)

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-510G 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.

Form Approved for Optional Use
Judicial Council of California
NC-500-INFO [Rev. September 1, 2019]

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*):		

DRAFT

02-19-19

Not approved by the Judicial Council

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITION OF *(name of each petitioner):*

FOR CHANGE OF GENDER (Minor)

ORDER TO SHOW CAUSE FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE
☐ **and CHANGE OF NAME**

CASE NUMBER:

(check all boxes that apply:)

☐ 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:

1. 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):*

2. 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: ☐ Dept.: ☐ Room:

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

TO ALL INTERESTED PERSONS:

3. ☐ A petition has been filed seeking change of name from *(minor's current name):* to *(proposed name):*

4. ☐ 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

Form Adopted for Mandatory Use
Judicial Council of California
NC-520 [Rev. September 1, 2019]

ORDER TO SHOW CAUSE FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE

Code of Civil Procedure, § 1277
www.courts.ca.gov